



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 8, 2019

Ms. Kayla Landeros  
City Attorney  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2019-06492

Dear Ms. Landeros:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 753970.

The City of Temple (the "city") received a request for specified information pertaining to a specified case involving the requestor's client. You claim the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. Alternatively, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have only submitted video recordings in response to the request. To the extent any additional responsive information existed on the date the city received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

You claim the submitted body worn camera recording was not properly requested pursuant to section 1701.661 of the Occupations Code. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must

follow when seeking a body worn camera recording. Section 1701.661(a) of the Occupations Code provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661 (a). In this instance, the requestor provides the requisite information under section 1701.661(a) of the Occupations Code for release of the submitted body worn camera recording. As the body worn camera recording was properly requested pursuant to chapter 1701 of the Occupations Code, we will consider your remaining argument against its disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by other statutes. The submitted information consists of a recording from a department officer’s body worn camera. As stated above, body worn cameras are subject to chapter 1701 of the Occupations Code. We understand the submitted recording was required to be made by law or the policies of the department and the recording relates to a law enforcement purpose. *See* Occ. Code § 1701.661(h). Further, we understand the recording is or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Additionally, we have no indication the recording documents an incident that involves the use of deadly force by an officer or relates to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). The recording at issue demonstrates it was not made in a private space for the purposes of section 1701.661(f). *See id.* §§ 1701.661(f), .651(3) (defining “private space” for purposes of section 1701.661(f)). We note, however, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion . . . of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person’s authorized representative.

*Id.* § 1701.661(f). You state the recording at issue pertains to the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest.

You also state you have not received a written authorization for release from all of the subjects of the recording. *See id.* Accordingly, we find the city must withhold the submitted body camera recording under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, upon review, we find the remaining video recordings, which do not consist of body worn camera recordings, are not subject to chapter 1701. Consequently, the city may not withhold this information pursuant to chapter 1701 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country.<sup>1</sup> Gov't Code § 552.130(a)(1), (2). We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to his client's motor vehicle record information and the city may not withhold it from him under section 552.130. *See id.* § 552.023(a) (person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself). Nevertheless, the city must withhold all discernible images of license plates not pertaining to the requestor's client

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

within the dashboard camera video recordings under section 552.130 of the Government Code.

In summary, the city must withhold the submitted body camera recording under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the visible license plates in the remaining information not pertaining to the requestor's client under section 552.130 of the Government Code. The city must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/mo

Ref: ID# 753970

Enc. Submitted documents

c: Requestor  
(w/o enclosures)