



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 19, 2019

Ms. Stacie S. White
Counsel for the Town of Flower Mound
Taylor, Olson, Adkins, Sralla & Elam, L. L. P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2019-07567

Dear Ms. White:

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# 762794.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified incident involving the requestor's client. You state the town will release some information. You state the town will redact information pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information includes police officers' body worn camera recordings. 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) provides:

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

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 does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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 established. *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) (personal financial information includes choice of a particular insurance carrier), 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). The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). We note the requestor has a right of access to his client’s private information. *See* Gov’t Code § 552.023(a) (“person or a person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

Upon review, we conclude some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information pertaining to the requestor's client, the town must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the town may not withhold any of the remaining information at issue under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and such information may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of information pertaining to the requestor's client, the town must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. We note section 552.136 also protects personal privacy. Accordingly, the requestor has a right of access to his client's information under section 552.023 of the Government Code and such information may not be withheld from him under section 552.136. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of information pertaining to the requestor's client, the town must withhold the insurance policy numbers we marked under section 552.136 of the Government Code.

In summary, as the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. With the exception of the information pertaining to the requestor's client, the town must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of information pertaining to the requestor's client, the town must withhold the information we marked under sections 552.130 and 552.136 of the Government Code. The town must release the remaining information.²

²We note the requestor has a right of access to some of the information being released under section 552.023 of the Government Code. *See* Gov't Code § 552.023; ORD 481 at 4. Accordingly, if the town receives another request for this same information from a different requestor, the town must again seek a ruling from this office.

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, 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/jxd

Ref: ID# 762794

Enc. Submitted documents

c: Requestor
(w/o enclosures)