



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 12, 2019

Mr. Christopher Austria
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2019-09922

Dear Mr. Austria:

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# 759106 (PIR No. W080573).

The Fort Worth Police Department (the "department") received a request for fourteen categories of information pertaining to a specified motor vehicle accident involving the requestor's client. You state you have released some information to the requestor. 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.

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. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code provides:

- (a) 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). We find the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recording. The submitted recording reflects it was required to be made by law or the policies of the department and relates to a law enforcement purpose. *See id.* § 1701.661(h). Further, you have failed to demonstrate the recording could not be used as evidence in a criminal prosecution. *See id.* § 1701.661 (d) (stating information “that is or could be used as evidence in a criminal prosecution is subject to the requirements of [the Act]”). Additionally, we have no indication the body worn camera recording documents an incident that involve 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 body worn camera recording 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). Upon review, we are unable to determine whether the body worn camera recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, we must rule conditionally. If the submitted body worn camera recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, we note there is no indication you have received written authorizations for release from all of the subjects of the recording. Accordingly, in this instance, the submitted body worn camera recording is confidential and the department must withhold it under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, if the submitted body worn camera recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only that did not result in arrest, no portion of the recording is confidential under section 1701.661(f) and the department may not withhold it under section 552.101 on that basis. In that instance, we will consider whether the department may withhold the submitted information under the Act.

Section 552.130 of the Government Code 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.¹ See Gov't Code § 552.130. We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to her client's motor vehicle record information and the department may not withhold it from her under section 552.130. See *id.* § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, within the submitted recordings, the department must withhold all discernible images of license plates and driver's licenses not pertaining to the requestor's client under section 552.130 of the Government Code.

Additionally, we note dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). However, as noted above, the requestor has a right of access to her client's birth date. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, the department must withhold all public citizens' dates of birth in the remaining information, other than the date of birth of the requestor's client, under section 552.101 of the Government Code in conjunction with common-law privacy.

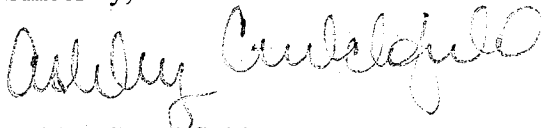
In summary, if the submitted body worn camera recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the department must withhold the submitted body worn camera recording in its entirety under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the submitted body worn camera recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only that did not result in arrest, then the department must: withhold all discernible images of license plates and driver's licenses not pertaining to the requestor's client under section 552.130 of the Government Code; all public citizens' dates of birth in the remaining information, other than the date of birth of the requestor's client, under section 552.101 of the Government Code in conjunction with common-law privacy; and release the remaining portions of the submitted body worn camera recording.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jxd

Ref: ID# 759106

Enc. Submitted documents

c: Requestor
(w/o enclosures)