



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 14, 2019

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

OR2019-16128

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# 770627 (ORR# W083044).

The Fort Worth Police Department (the "department") received a request for nine categories of information pertaining to a specified traffic accident. You state you will release some information. 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 police 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 note the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recording at issue. 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 id.* § 1701.661(h). We also understand the recording at issue 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). We note, however, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion made in a private space, or 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). In this instance, the department states “the requestor has not provided the information required by section 1701.661(f) of the Occupations Code.” Thus, we understand the department has not received written authorizations for release from all of the subjects of the recording. However, although you assert section 1701.661(f), you do not explain whether the 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 recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then 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, to the extent the submitted body worn camera recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, we will address the private space aspect of section 1701.661(f) of the Occupations Code.

As previously noted, section 1701.661(f) prohibits the release of body camera recordings made in a private space without proper authorization from the person who is the subject of that portion of the recording. *Id.* Upon review, we find portions of the submitted video recording were made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). Accordingly, if the submitted body worn camera recording

does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then the department must withhold those portions of the video recording made in a private space, which we indicated, under section 552.101 of the Government Code in conjunction with section 1701.661 of the Occupations Code, but may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 1701.661 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.). Upon review, the department must withhold all public citizens' dates of birth in the remaining portions of the video under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some information is subject to section 552.130 of the Government Code.¹ 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. Accordingly, the department must withhold all visible and audible driver's license numbers, license plates, and vehicle registration stickers under section 552.130 of the Government Code.

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, then the department must withhold it 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 and that did not result in arrest, then the department must (1) withhold those portions of the video recording we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code, (2) withhold all public citizens' dates of birth under section 552.101 of the Government Code

¹The 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).

in conjunction with common-law privacy, (3) withhold all visible and audible driver's license numbers, license plates, and vehicle registration stickers under section 552.130 of the Government Code, and (4) 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, 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,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 770627

Enc. Submitted documents

c: Requestor
(w/o enclosures)