



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 19, 2019

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2019-19828

Dear Ms. Burnett:

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# 776199 (OGC# 190349).

The University of Texas Permian Basin (the "university") received a request for information related to a named university police officer. You state you will release some information to the requestor. You state you do not have information responsive to a portion of the request.¹ You state you will withhold information under sections 552.130(c) and 552.147(b) of the Government Code and Open Records Letter No. 2016-01245 (2016).² You claim portions

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor pursuant to section 552.130(e). *See id.* § 552.130(d), (e). Section 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 under the Act. *See id.* § 552.147(b). Open Records Letter No. 2016-01245 authorizes the university to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the requested information includes the body worn camera recordings of university police officers. 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 provides, in relevant part, the following:

(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). In this instance, the requestor does not provide 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 of the Occupations Code, 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 [s]ubsection (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).

Article 2.1396 of the Code of Criminal Procedure provides:

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or

³We note you failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office with respect to some of the submitted information. *See* Gov’t Code § 552.301(e). Nonetheless, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of these exceptions to the information at issue, notwithstanding the university’s violation of section 552.301 in requesting this decision with respect to this information.

arrest a copy of any video made by or at the direction of the officer that contains footage of:

- (1) the stop;
- (2) the arrest;
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or
- (4) a procedure in which a specimen of the person's breath or blood is taken.

Crim. Proc. Code art. 2.1396. The submitted information includes video recordings made by or at the direction of an officer employed by the university's police department of the requestor's client being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. *See* Penal Code § 49.04 ("A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place."). Therefore, the requestor is entitled to receive a copy of these video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. You raise section 552.130 of the Government Code for the information subject to article 2.1396. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). A statutory right of access generally prevails over the Act's general exceptions to disclosure. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the confidentiality provided under section 552.130 of the Government Code and the right of access provided under article 2.1396 of the Code of Criminal Procedure. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See* Gov't Code § 311.026(b); *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar v. State*, 521 S.W.2d 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, section 552.130 generally excepts motor vehicle record information maintained in any context, while article 2.1396 specifically provides access to certain video footage pertaining to certain intoxication offense arrests. Thus, we conclude the access to the portions of the video recordings provided under article 2.1396 is more specific than the general confidentiality provided under section 552.130. Additionally, we note article 2.1396 is the later enacted statute. *See* Gov't Code § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute

latest in enactment prevails). Accordingly, the university may not withhold those portions of the video recordings that depict the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the requestor's client's blood or breath is taken under section 552.130 of the Government Code, and must release this information pursuant to article 2.1396 of the Code of Criminal Procedure.

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 protected by other statutes. Section 51.971 of the Education Code provides, in pertinent part, the following:

(a) In this section:

(1) "Compliance program" means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

(A) ethics and standards of conduct;

(B) financial reporting;

(C) internal accounting controls; or

(D) auditing.

(2) "Institution of higher education" has the meaning assigned by Section 61.003.

...

(c) The following are confidential:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and

(2) information that directly or indirectly reveals the identity of an individual as a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the compliance program office of an institution of higher

education if, after completing an investigation, the office determines the report to be unsubstantiated or without merit.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

Educ. Code § 51.971(a), (c)-(d). You inform us the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You state some of the submitted information pertains to closed compliance investigations undertaken by the university police department's internal affairs division and allegations against the individual were substantiated. You state the investigations were conducted in response to allegations against a university employee and were initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations, we find this information relates to investigations conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You assert release of the information you have marked would directly or indirectly reveal the identities of those individuals who participated in the investigation or provided information. You inform us none of these individuals have consented to release of their information. Upon review, we agree release of the information you have marked would directly or indirectly identify individuals as complainants or as participants in the compliance program investigation. *See id.* § 51.971(c)(1). Accordingly, the university must withhold the information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See Gov't Code* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F of the Government Code. *See Gov't Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411,

subchapter E-1 or subchapter F of the Government Code. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find the FBI number you have marked consists of CHRI that is confidential under section 411.083. Accordingly, the university must withhold the FBI number you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.⁴

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is 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 the *Industrial Foundation* decision. *Id.* at 683. In addition, a compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. The Third 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 otherwise private information pursuant to section 552.023 of the Government Code. *See Gov’t Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We note some of the video recordings at issue contain information not relating to the requestor’s client that is subject to common-law privacy. Although you assert the university lacks the technological capability to redact information from the submitted video recordings, we understand the university has the capability to produce a copy of only the non-confidential portions of the video recordings. Thus, with the exception of the date of birth belonging to the requestor’s client, the university must withhold all public citizens’ dates of birth you have marked and all audible public citizens’ dates of birth in the video recordings at issue under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing information of an individual that is of no legitimate public concern. Accordingly, the university may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

⁴We note an individual can obtain his own CHRI from DPS. *See Gov’t Code* § 411.083(b)(3).

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 privacy interests. Accordingly, the requestor has a right of access to his client's motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id. § 552.023(a); ORD 481 at 4.* We note some of the video recordings at issue contain information not relating to the requestor's client that is subject to section 552.130. Although you assert the university lacks the technological capability to redact information from the submitted video recordings, we understand the university has the capability to produce a copy of only the non-confidential portions of the video recordings. Accordingly, with the exception of the information belonging to the requestor's client, the university must withhold the information you have marked, along with all visible and audible license plates, driver's license numbers, and driver's license issuing states in the video recordings at issue, under section 552.130 of the Government Code.

As noted above, you state you will redact social security numbers pursuant to section 552.147(b) of the Government Code. Section 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 under the Act. *See Gov't Code § 552.147(b).* Because section 552.147 protects personal privacy, the requestor has a right of access to his client's social security number pursuant to section 552.023 of the Government Code. *See id. § 552.023(a); ORD 481 at 4.* However, the university may withhold the remaining social security number you have marked under section 552.147 of the Government Code.

In summary, as the body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and they need not be released. Pursuant to article 2.1396 of the Code of Criminal Procedure, the university must release those portions of the video recordings that depict the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the requestor's blood or breath is taken. The university must withhold the information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. The university must withhold the FBI number you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. With the exception of the date of birth belonging to the requestor's client, the university must withhold all public citizens' dates of birth you have marked and all audible public citizens' dates of birth in the remaining video recordings under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information belonging to the requestor's client, the university must withhold the information you have marked, along with all visible and audible license plates, driver's license numbers, and driver's license issuing states in the remaining video recordings, under section 552.130 of the Government Code. With the

exception of the social security belonging to the requestor's client, the university may withhold the remaining social security number you have marked under section 552.147 of the Government Code. The university must release the remaining information to this requestor.⁵

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 776199

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the requestor has a special right of access to some of the information being released in this instance. See Crim. Proc. Code art. 2.1396; see also Gov't Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the university receives another request for this information from a different requestor, the university must again seek a ruling from this office.