



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 23, 2019

Lieutenant William Ryan
Police Department
City of Pharr
1900 South Cage Boulevard
Pharr, Texas 78577

OR2019-20130

Dear Lieutenant Ryan:

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# 776759 (Ref# P000799-040319).

The Pharr Police Department (the "department") received a request for information pertaining to a specified traffic accident involving the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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. 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:

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 submitted body worn camera recordings. The recordings reflect they were required to be made by law or the policies of the department and relate to a law enforcement purpose. *See id.* § 1701.661(h). The department asserts the submitted body worn camera recordings are subject to subsections 1701.661(c) and (d), which provide:

(c) Except as provided by Subsection (d), information recorded by a body worn camera and held by a law enforcement agency under this subchapter is not subject to the requirements of section 552.021, Government Code.

(d) Information that is or could be used as evidence in a criminal prosecution is subject to the requirements of Section 552.021, Government Code.

Id. § 1701.661(c)-(d). The department states the body worn camera recordings could not be used as evidence in a criminal prosecution. However, upon review, we find the department failed to demonstrate the submitted recordings could not be used as evidence in a criminal prosecution. *See id.* Accordingly, we find the submitted body worn camera recordings are not confidential under section 1701.661(c) and the department may not withhold them pursuant to section 552.101 on that basis.

Section 552.101 of the Government Code 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.). We note the requestor is the authorized representative of one of the individuals whose information is at issue and, thus, has a right of access to his client's information under section 552.023 of the Government Code. In this event, the department may not withhold information pertaining to the requestor's client under section 552.101 on the basis of common-law privacy. *See Gov't § 552.023(a)* (person or 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 is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the department must withhold all dates of birth within the submitted information, to the extent this information does not pertain to the requestor's client, under section 552.101 of the Government Code in conjunction with common-law privacy.

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 a 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. 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 it may not be withheld from him under section 552.130. *See* Gov't Code § 552.023 (a); ORD 481 at 4. However, we note some of the motor vehicle record information at issue may belong to the requestor's client, and, as such, the requestor may have a right of access to such information. However, because we are unable to determine whether the information at issue belongs to the requestor's client, we must rule conditionally. Thus, to the extent the motor vehicle record information we marked and indicated belongs to the requestor's client, the department must release it under section 552.023 of the Government Code. To the extent the motor vehicle record information we marked and indicated does not belong to the requestor's client, the department must withhold it under section 552.130 of the Government Code.

In summary, the department must withhold all dates of birth within the submitted information, to the extent this information does not pertain to the requestor's client, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked and indicated under section 552.130 of the Government Code, to the extent this information does not pertain to the requestor's client. The department 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, 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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a long horizontal flourish extending to the right.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/jxd

Ref: ID# 776759

Enc. Submitted documents

c: Requestor
(w/o enclosures)