



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 9, 2019

Ms. Nicole Warren  
Deputy City Attorney  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2019-28280

Dear Ms. Warren:

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# 790391.

The City of Temple (the "city") received two requests from the same requestor for information related to a specified vehicle accident involving the requestor's client. You claim the submitted information was not properly requested under chapter 1701 of the Occupations Code. You further claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, we note some of the submitted information, which we indicated, is not responsive to the instant request for information because it does not consist of information related to the specified vehicle accident. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

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

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<sup>1</sup> We note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office for the first request. *See* Gov't Code § 552.301(b), (e). Nonetheless, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

Code § 552.101. This section encompasses information made confidential by other statutes. We note the responsive information contains a city police officer's body worn camera recording. 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). In this instance, the requestor does not give the requisite information under section 1701.661(a) in his first request. 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).

As the requestor provided the requisite information under section 1701.661(a) in his second request, we will address your arguments for the submitted body worn camera recording. We understand the submitted recording was required to be made by law or the policies of the city's police 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). The submitted 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). You state the recording at issue involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. You state the city has not received written authorizations for release from all of the subjects of the

recording. *See id.* § 1701.661(f). Accordingly, the submitted body worn camera recording is confidential and must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. We note the remaining responsive information, which consists of a dashboard camera recording, is not subject to section 1701.661 of the Occupations Code, and the city may not withhold any portion of the remaining responsive information on that basis. Accordingly, we will consider whether the remaining responsive information is otherwise excepted from disclosure under the Act.

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 Third 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 has a right of access to his client's date of birth. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the date of birth of the requestor's client, the city must withhold all public citizens' dates of birth 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 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.<sup>2</sup> Gov't Code § 552.130(a). The requestor has a right of access to his client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Upon review, with the exception of the information pertaining to the requestor's client, the city must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

In summary, the submitted body worn camera recording is confidential and must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. With the exception of the date of birth of the requestor's client, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information pertaining to the requestor's client, the city must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code. The city must release the remaining responsive information.

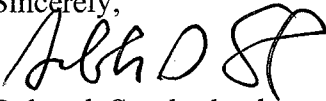
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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Deborah Southerland  
Attorney  
Open Records Division

DS/jxd

Ref: ID# 790391

Enc. Submitted documents

c: Requestor  
(w/o enclosures)