



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 4, 2019

Ms. Pamela J. Denholm  
Assistant City Attorney  
Arlington Police Department  
Mail Stop 04-0200  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2019-31001

Dear Ms. Denholm:

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# 794916 (Reference# 85519).

The Arlington Police Department (the "department") received a request for twenty eight categories of information related to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-22971 (2019). In Open Records Letter No. 2019-22971, we determined the department 1) must release the court-filed documents pursuant to section 552.022(a)(17) of the Government Code; 2) must release the accident report to this requestor pursuant to section 550.065(c) of the Transportation Code; 3) must release the submitted Statutory Warning; however, in releasing this document, the department must withhold the marked date of birth of a member of the public under section 552.101 of the Government Code in conjunction with common-law privacy and must withhold the marked motor vehicle record information under section 552.130 of the Government Code; and 4) with the exception of the basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the department must continue to rely on Open Records Letter No. 2019-22971 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the department's arguments against

release of the submitted information that is not encompassed by Open Records Letter No. 2019-22971.

Next, we must address the department's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Although you state you received the request on August 14, 2019, we note the envelope the department received the request in is stamped as received by the department on August 12, 2019. Accordingly, the department's ten-business-day deadline was August 26, 2019. However, the envelope in which you submitted the information under section 552.301(b) bears a post meter mark of August 28, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Upon review, we find the department failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The department claims section 552.108 of the Government Code for the submitted information. Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of the Act under these sections for the submitted information.<sup>1</sup> However, we find you have failed to establish a compelling reason to address your exception.

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

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<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). Upon review of the information at issue, we determine the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the submitted body worn camera recordings. However, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion of a recording 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). Some of the recordings were made in a private space for purposes of section 1701.661(f). *See id.* §§ 1701.661(f), .651(3) (defining “private space” for purposes of section 1701.661 (f)). You do not indicate the department has permission for release from the subject of the recordings made in the private space. Accordingly, we find the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

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.). Thus, the department must withhold the public citizen's date of birth we have indicated 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 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 the remaining video recordings contain motor vehicle record information subject to section 552.130. The requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) (“person or a 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 that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the department must withhold the information we have marked and any audible or visible motor vehicle record information not belonging to the requestor's client in the remaining video recordings under section 552.130 of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2019-22971 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must withhold the public citizen's date of birth we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked and any audible or visible motor vehicle record information not belonging to the requestor's client in the remaining video recordings under section 552.130 of the Government Code. The department must release the remaining information.<sup>2</sup>

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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/rm

Ref: ID# 794916

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the remaining information includes a social security number. Section 552.147(b) of the Government Code authorizes a government 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. Gov't Code § 552.147(b). Further, we note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. See Gov't Code § 552.023; see also ORD 481 at 4. Accordingly, if the department receives another request for this same information from a different requestor, it must again seek a ruling from this office.