



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 12, 2019

Ms. Karen Strand  
Senior Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2019-31820

Dear Ms. Strand:

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# 796365.

The Mesquite Police Department (the "department") received a request for officer body worn camera recordings pertaining to a specified incident. You state the department will withhold dates of birth pursuant to the previous determination issued in Open Records Letter No. 2015-24970 (2015).<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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. 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) of the Occupations Code provides the following:

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<sup>1</sup> Open Records Letter No. 2015-24970 is a previous determination issued to the department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

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 provides the requisite information under section 1701.661(a) for release of the body worn camera recordings at issue. We note, 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 . . . 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). Upon review, we find the portions of the submitted video recordings you indicated were made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). You inform us the department does not have permission for release from the subject of the recording made in the private space. *See id.* § 1701.661(f). Accordingly, we find the department must withhold the information you 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, 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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor has a right of access to her own private information pursuant to section 552.023 of the Government Code, and this information may not be withheld from her under common-law privacy. *See Gov’t Code* § 552.023(a) (person or person’s authorized representative has special right of access to records that contain information relating to the person that are 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 individuals request information concerning themselves). Accordingly, with the exception of the information pertaining to the requestor, the department must withhold the information you indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure 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. *See* Gov't Code § 552.130. We note, because section 552.130 protects privacy interests, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the motor vehicle record information pertaining to the requestor, we find the department must withhold the motor vehicle record information you indicated, and the additional motor vehicle record information we indicated, under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). We note the requestor has a right of access to her own account information pursuant to section 552.023 of the Government Code, and it may not be withheld from this requestor under section 552.136. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the insurance policy number pertaining to the requestor, the department must withhold the insurance policy numbers you indicated under section 552.136 of the Government Code.

In summary, the department must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. With the exception of the information pertaining to the requestor, the department: (1) must withhold the information you indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (2) must withhold the motor vehicle record information you indicated and we indicated under section 552.130 of the Government Code; and (3) must withhold the insurance policy numbers you indicated under section 552.136 of the Government Code. The department must release the remaining information.<sup>2</sup>

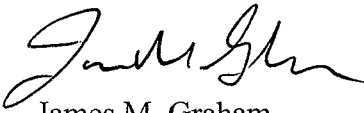
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<sup>2</sup> We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); *see also* ORD 481 at 4. Accordingly, if the department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

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,



James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/jxd

Ref: ID# 796365

Enc. Submitted documents

c: Requestor  
(w/o enclosures)