



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 7, 2020

Ms. Tiffany Bull  
Assistant City Attorney  
City of Grand Prairie  
P.O. Box 534045  
Grand Prairie, Texas 75053-4045

OR2019-33052A

Dear Ms. Bull:

This office issued Open Records Letter No. 2019-33052 (2019) on November 22, 2019. We have determined the prior ruling should be corrected. *See* Gov't Code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2019-33052 and serves as the correct ruling. *See generally id.* § 552.011 (Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 813490 (Reference #GPCA 19-0194).

The Grand Prairie Police Department (the "department") received a request for information pertaining to the requestor's involvement in a specified investigation. The department states it has released some of the requested information, but claims some of the submitted information is either not subject to release pursuant to chapter 1701 of the Occupations Code or excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

The city asserts the submitted recording was not properly requested pursuant 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 the following:

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). However, section 1701.661 applies to a police officer's body worn camera recording. *See id.* § 1701.651(1)(B) (“‘Body worn camera’ means a recording device that is . . . worn on the person of a peace officer[.]”). Upon review, we conclude the city has failed to demonstrate the information at issue consists of information recorded by a body worn camera for purposes of section 1701.661. Therefore, we conclude the submitted recording is not subject to section 1701.661 of the Occupations Code, and the city may not withhold any portion of it on that basis.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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 the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). 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 agree the information that the department has marked and indicated under common-law privacy satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the department must also withhold the information it has marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code may be applicable to some of the remaining information.<sup>1</sup> Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov’t Code § 552.1175. The department must withhold the information we have indicated under section 552.1175 of the Government Code if the individual elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. However, the department may not withhold this information under section 552.1175 if the individual does not elect to restrict access to this information in accordance with section 552.1175(b).

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<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

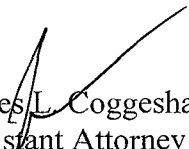
Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). Thus, the department must withhold the information we have indicated under section 552.136 of the Government Code.

In summary, the department must withhold the following: (1) the information it has marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have indicated under section 552.1175 of the Government Code if the individual elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code; and (3) the information we have indicated under section 552.136 of the Government Code. 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 <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 L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 795688

Enc. Submitted documents

c: Requestor  
(w/o enclosures)