



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2019

Ms. Theresa Prasil
City Administrator
City of Teague
105 South 4th Avenue
Teague, Texas 75860

OR2019-33685

Dear Ms. Prasil:

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# 799355 (ID: T091319BM).

The City of Teague (the "city") received a request for a specified body worn camera recording. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address the requestor's contention that some of the information at issue has previously been made available to the public. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). The requestor argues the city has released some of the information at issue by presenting the information at an open meeting. However, we note section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. Upon review, we have no indication the information at issue has been

previously released in its exact form to any members of the public. Accordingly, we find section 552.007 is inapplicable to the submitted information and we will address the city's arguments against its disclosure.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The city states the submitted information pertains to a case that "has not resulted in a conviction or deferred adjudication." However, section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case that "*did not* result in conviction or deferred adjudication" (emphasis added). *Id.* § 552.108(a)(2). Thus, we find the city has failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information. Accordingly, the city may not withhold any of the submitted information under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information made confidential by other statutes. We note the submitted information consists of a recording from a city police officer's body worn camera. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661 (a) of the Occupations Code states the information a requestor must provide when seeking a body worn camera recording. *See Occ. Code* § 1701.661(a). Upon review, we find the requestor in this instance provided the requisite information. However, section 1701.661(f) provides:

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). Upon review, we find portions of the submitted video recording were made in a private space. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). The city does not indicate it has permission for release from all of the subjects of the recording made in the private space at issue. *See id.* § 1701.661(f). Accordingly, we find the city must withhold the portion of the recording made in a private space under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 1701.661 of the Occupations Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration

issued by this state or another state or country.¹ Gov't Code § 552.130(a)(1), (2). Accordingly, the city must withhold the visible license plates and audible driver's license number under section 552.130 of the Government Code.

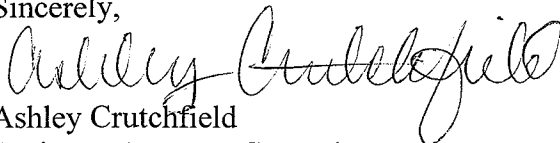
Section 552.101 of the Government Code encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public 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.). Thus, the city must withhold the public citizens' dates of birth under section 552.101 of the Government Code.

In summary, the city must withhold the portion of the recording made in a private space under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The city must withhold the public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the visible license plates and audible driver's license number under section 552.130 of the Government Code. The city 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

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¹ 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 (1987), 480 (1987), 470 (1987).

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Enc. Submitted documents

c: Requestor
(w/o enclosures)