



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Mr. Robert G. Schleier, Jr.  
Counsel for the City of Kilgore  
Law Office of Robert G. Schleier  
116 North Kilgore Street  
Kilgore, Texas 75662

OR2019-36319

Dear Mr. Schleier:

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# 803044.

The Kilgore Police Department (the "department"), which you represent, received a request for specified information.<sup>1</sup> You state you will release some of the requested information. You claim some of the submitted information is not subject to the Act pursuant to section 1701.661 of the Occupations Code. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>2</sup> We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information includes video recordings from police officers' body worn cameras. 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:

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<sup>1</sup> As you have not submitted the request for information, we take our description from your brief.

<sup>2</sup> We note we asked the department to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar date after date of receipt of notice). We have received and considered correspondence sent by the department pursuant to that request.

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, we are not able to determine whether the requestor provided the requisite information under section 1701.661(a). Thus, we rule in the alternative. To the extent the requestor did not give the requisite information under section 1701.661(a), the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code. In that instance, our ruling does not reach this information and the department need not release it. 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). To the extent the requestor did provide the requisite information under section 1701.661(a), we will consider your argument against disclosure of this information.

Next, we must address the department’s obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov’t Code § 552.301(e)(1)(A)-(D). You inform us the department received the request for information on September 27, 2019. However, as of the date of this letter, you have not submitted to this office a copy of the written request for information. Accordingly, we conclude the department failed to comply with the requirements of section 552.301.

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). Because sections 552.101 and 552.130 can provide a compelling reason to overcome the presumption of

openness, we will address the applicability of these exceptions to the submitted information.<sup>3</sup> However, we find you have failed to establish a compelling reason to address your remaining exception.

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 section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (“HSA”). Section 418.182(a) of the Government Code provides in relevant part, “information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.” *Id.* § 418.182(a). The fact that information may be related to a governmental body’s security system does not make the information per se confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the submitted jail video recording reveals the locations, video quality and clarity, camera angles, and video surveillance coverages of security surveillance cameras located at the department jail. You explain the surveillance cameras at issue are necessary to protect public and private property from possible acts of criminals and terrorists. Upon review, we find the submitted surveillance video recording relates to the location and specifications of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras’ capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the department must withhold the submitted surveillance video recording under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government 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. Gov’t Code § 552.130(a)(1), (2). Accordingly, the department must generally withhold the visible license plates and audible driver’s license number under section 552.130 of the Government Code. However, we note

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<sup>3</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).

section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to the requestor's own 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). However, because we are unable to determine whether the information at issue belongs to the requestor, we must rule conditionally. Thus, to the extent the motor vehicle record information at issue belongs to the requestor, the department must release it under section 552.023 of the Government Code. To the extent the motor vehicle record information we indicated does not belong to the requestor, the department must withhold it under section 552.130 of the Government 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 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.). However, we note the requestor has a right of access to her own birth date. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, the department must withhold all public citizens' dates of birth in the remaining information, other than the date of birth of the requestor, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the requestor did not give the requisite information under section 1701.661(a), the submitted body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code and need not be released to this requestor in response to this request for information. The department must withhold the submitted surveillance video recording under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. To the extent the motor vehicle record information we indicated does not belong to the requestor, the department must withhold the visible license plates and audible driver's license number under section 552.130 of the Government Code. The department must withhold all audible public citizens' dates of birth, other than the date of birth of the requestor, under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

A handwritten signature in cursive script that reads "Ashley Crutchfield". The signature is written in black ink and is positioned above the typed name.

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/gw

Ref: ID# 803044

Enc. Submitted documents

c: Requestor  
(w/o enclosures)