



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 14, 2020

Mr. Robert Carroll  
Senior Assistant City Attorney  
City of Odessa  
P.O. Box 4398  
Odessa, Texas 79760-4398

OR2020-01397

Dear Mr. Carroll:

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# 806297 (ORR No. P000762-081919).

The City of Odessa (the "city") received a request for information pertaining to a specified case number involving the requestor's client. You state you have released some information to the requestor. You state the city is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You argue some of the submitted information consists of body worn camera recordings that were not properly requested pursuant to section 1701.661 of the Occupations Code. You further claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered your arguments and reviewed the submitted information.

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

<sup>2</sup> The city acknowledges it failed to comply with section 552.301 of the Government Code in requesting a ruling; however, section 552.101 of the Government Code can provide a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.301, .302. Accordingly, we will consider the applicability of the claimed exception.

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. *See* Occ. Code § 1701.661(a). Exhibit C consists of dashboard camera recordings and audio recordings from city police department vehicles. Although the city asserts the recordings in Exhibit C constitute body worn camera recordings on the basis of the decision in *King v. Paxton*, 576 S.W.3d 881 (Tex. App.—Austin 2019, pet. filed), we note a petition for review was filed with the Texas Supreme Court on August 21, 2019. Accordingly, the decision in *King* is limited to the facts and information at issue in the underlying letter ruling and does not apply to the information currently at issue. Therefore, the city may not rely on the decision in that case. As such, we find the information at issue does not consist of body worn camera recordings subject to chapter 1701 of the Occupations Code. Thus, the city may not withhold the information at issue on that basis and we will address the city’s remaining argument against disclosure for this information.

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. Section 552.101 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.).

The submitted information contains public citizens’ dates of birth. However, we note the requestor has a right of access to her client’s date of birth and it may not be withheld from her on the basis of common-law privacy. *See* Gov’t Code § 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, with the exception of the date of birth of the requestor’s client, the city must withhold all public citizens’ dates of birth in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find none of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy. As you raise no other exceptions to disclosure, the remaining information must be released.

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 black ink, appearing to read 'Michelle Garza', with a long horizontal flourish extending to the right.

Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/gw

Ref: ID# 806297

Enc. Submitted documents

c: Requestor  
(w/o enclosures)