



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 24, 2020

Ms. Brandy Kidwell
Records Division Manager
City of North Richland Hills
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR2020-02255

Dear Ms. Kidwell:

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# 808299 (ORL 19-1400).

The North Richland Hills Police Department (the "department") received a request for fourteen categories of information pertaining to a specified motor vehicle accident involving the requestor's client. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the department has only submitted a body worn camera recording in response to the present request for information. To the extent any additional information responsive to the request existed on the date the department received the present request, we assume the department has already released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. This section encompasses information made confidential by other statutes. As noted above, the submitted information consists of a recording from a police officer's body worn camera. 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). We note the requestor provides the requisite information for the body worn camera recording at issue. 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 are unable to determine whether the recording at issue involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, we must rule conditionally. To the extent the body worn camera recording at issue involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, we note there is no indication the department has received written authorizations for release from all of the subjects of the recording. Accordingly, in that instance, the submitted body worn camera recording is confidential and must be withheld in its entirety under section 552.101 in conjunction with section 1701.661(f) of the Occupations Code.¹ However, to the extent the submitted body worn camera recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, we will consider whether the information at issue is excepted from disclosure under the Act.

As noted above, section 1701.661(f) prohibits the release of body worn camera recordings made in a private space without proper authorization from the person who is the subject of that portion of the recording. *Id.* Upon review, we find portions of the recording at issue were made in a private space. *See id.* § 1701.651 (3) (defining "private space" for purposes of section 1701.661(f)). We understand the department does not have permission for release from the subjects of the recording made in a private space. *See id.* § 1701.661(f). Accordingly, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.²

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*

¹ In that instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Foundation. Id. at 683. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code 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.³ Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). The remaining information at issue contains information that may be subject to section 552.1175. Thus, to the extent the information we indicated relates to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the department must withhold it under section 552.1175 of the Government Code. However, if the individual whose information is at issue is not currently a licensed peace officer or does not elect to restrict access to the information in accordance with section 552.1175(b), the information we indicated may not be withheld under section 552.1175 of the Government Code.

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 id.* § 552.130. We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to motor vehicle record information pertaining to her client, and such information may not be withheld from her on the basis of section 552.130 of the Government Code. *See id.* § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are

³ 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).

protected from public disclosure by laws intended to protect that person's privacy interests); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Accordingly, with the exception of the information pertaining to the requestor's client, the department must withhold all audible and visible license plates, registration stickers, and driver's license information within the remaining recording at issue under section 552.130 of the Government Code.

Section 552.136(b) 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 government body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the department must withhold the information we indicated under section 552.136 of the Government Code.

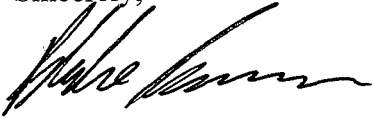
In summary, if the recording at issue involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then the department must withhold the submitted body worn camera recording in its entirety under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the recording at issue does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then: (1) the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code; (2) the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (3) to the extent the information we indicated relates to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the department must withhold it under section 552.1175 of the Government Code; (4) with the exception of the information pertaining to the requestor's client, the department must withhold all audible and visible license plates, registration stickers, and driver's license information within the remaining recording at issue under section 552.130 of the Government Code; (6) the department must withhold the information we indicated under section 552.136 of the Government Code; and (7) the department must release the remaining information to this requestor.⁴

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.

⁴ As noted above, the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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 "Blake Brennan", written in a cursive style.

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

Ref: ID# 808299

Enc. Submitted documents

c: Requestor
(w/o enclosures)