



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 24, 2020

Ms. Karen Strand  
Senior Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2020-02353

Dear Ms. Strand:

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# 808307.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified incident.<sup>1</sup> You state the department will release some information. You also state the department will withhold dates of birth pursuant to the previous determination issued in Open Records Letter No. 2015-24970 (2015).<sup>2</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.1175, 552.130, and 552.136 of the Government Code.<sup>3</sup> We have considered the claimed exceptions and reviewed the submitted information.

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<sup>1</sup> We note the department received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup> Open Records Letter No. 2015-24970 is a previous determination issued to the department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

<sup>3</sup> Although you cite to section 552.117 of the Government Code for portions of the submitted information, we note section 552.1175 of the Government Code is the proper exception to raise for information the department holds in a law enforcement capacity rather than in an employment capacity.

Section 552.101 of the Government Code excepts from public 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. 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) of the Occupations Code 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). In this instance, the requestor provides the requisite information under section 1701.661(a) for release of the body worn camera recordings at issue. We note, however, section 1701.661(f) provides, in relevant part, “A law enforcement agency may not release any portion of a recording made in a private space . . . 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 the portions of the submitted video recordings you indicated were made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). You inform us the department does not have permission for release from the subject of the recording made in the private space. *See id.* § 1701.661(f). Accordingly, we find the department must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

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 Foundation*. *Id.* at 683. This office has found that 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).

Upon review, we find the information the department indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information you indicated 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. 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 department must withhold the information you indicated under section 552.1175 if the individual to whom the information pertains is still a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b).

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. The remaining information contains visible and discernable motor vehicle record information. The department must withhold this information, which you indicated, 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 governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the department must withhold the insurance policy number you indicated under section 552.136 of the Government Code.

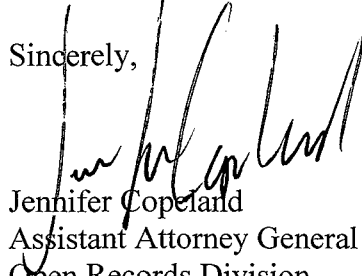
In summary, the department must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must withhold the information you indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you indicated under section 552.1175 of the Government Code if the individual to whom the information pertains is still a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. The department must withhold the motor vehicle record information you indicated under section 552.130 of the Government Code. The department must withhold the insurance policy number you indicated under section 552.136 of the Government Code. The department must release the remaining information.

Although the department asks this office to issue a previous determination permitting it to withhold insurance carrier names under section 552.101 of the Government Code in conjunction with common-law privacy, we decline to issue one at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/gw

Ref: ID# 808307

Enc. Submitted documents

c: Requestor  
(w/o enclosures)