



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 27, 2020

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

OR2020-02438

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# 807618 (Request ID #s P001632-103019 and P001974-121619).

The City of Odessa (the "city") received a request for fourteen categories of information pertaining to a particular motor vehicle accident. You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note a portion of the submitted information is not "public information" subject to disclosure under the Act. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We note some of the submitted information consists of information used solely for the purpose of maintenance, manipulation, or protection of public property and has no other significance. Upon review, we conclude the password information we have indicated is not "public information" for purposes of the Act, and the city is not required to release it in response to this request.<sup>1</sup>

Next, we note the remaining information contains city police officers' body worn camera recordings. 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 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). Although you claim the requestor did not properly request the body worn camera recordings at issue, we note, in this instance, the requestor provided the requisite information under section 1701.661(a) for the body worn camera recordings at issue. Thus, as the body worn camera recordings were properly requested pursuant to chapter 1701 of the Occupations Code, we will address your arguments against their disclosure.

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

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<sup>1</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

Code § 552.101. Section 552.101 encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. Transp. Code §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c). Here, the requestor is a person listed under section 550.062(c). Thus, the city must release the submitted accident report to this requestor pursuant to section 550.065(c) of the Transportation Code.

Section 552.101 of the Government Code encompasses information made confidential by other statutes. As noted above, body worn cameras are subject to chapter 1701 of the Occupations Code, and the requestor provided the requisite information. *See* Occ. Code § 1701.661(a). 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 a portion of one of the video recordings at issue was 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 portion 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, which we have indicated, under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.<sup>2</sup> 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 552.101 of the Government Code also encompasses 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

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.).

We note the requestor, as her client's authorized representative, has a right of access to the information at issue pertaining to her client pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we conclude some of the information at issue meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, with the exception of the requestor's client's date of birth, the city must withhold all public citizens' dates of birth and the information we have indicated in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is either not highly intimate or embarrassing or is of legitimate public interest. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>3</sup> *See* Gov't Code § 552.130(a). We note section 552.130 protects privacy interests. As noted above, the requestor is her client's authorized representative. As such, the requestor has a right of access to her client's motor vehicle record information. *See id.* § 552.023(a); ORD 481 at 4. Therefore, with the exception of information pertaining to her client, the city must withhold all audible or discernable driver's license information, license plates, vehicle registration stickers, and VIN numbers in the remaining information under section 552.130 of the Government Code.

In summary, pursuant to section 552.002 of the Government Code, the password information we have indicated is not "public information" for purposes of the Act, and the city is not required to release it in response to this request. The city must release the submitted accident report pursuant to section 550.065(c) of the Transportation Code. The city must withhold the portion of the body worn camera recording made in a private space, which we have indicated, under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. With the exception of the requestor's client's date of birth, the city must withhold all public citizens' dates of birth and the information we have indicated in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of information pertaining to the requestor's client, the city must withhold all audible or

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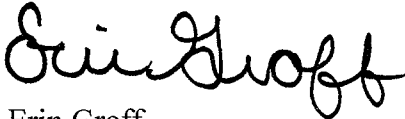
<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

discernable driver's license information, license plate information, vehicle registration stickers, and VIN numbers in the remaining information 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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/be

Ref: ID# 807618

Enc. Submitted documents

c: Requestor  
(w/o enclosures)