



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 6, 2020

Ms. Tiffany Bull  
Assistant City Attorney  
City of Grand Prairie  
P.O. Box 534045  
Grand Prairie, Texas 75053-4045

OR2020-03607

Dear Ms. Bull:

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# 810800 (GPCA 19-0275).

The Grand Prairie Police Department (the "department") received a request for fourteen categories of information related to an 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 not submitted information responsive to all the categories of information to which the requestor seeks access. Although the department states it has submitted a representative sample of the requested information, we find the submitted information is not representative of all of the types of information at issue. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the types of information the department submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any such information existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See id.* §§ 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. The submitted information consists of a body worn camera recording of a department police officer. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code states the information a requestor must provide when seeking a body worn camera recording. Occ. Code § 1701.661(a). We note the requestor provided the requisite information for the body worn camera recordings at issue. However, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion . . . 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). You state the submitted body worn camera recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Upon review, we note the requestor’s client is one of the subjects of the recording. Thus, we find the requestor’s client has consented to release of the recording to the requestor for the purposes of subsection (f) and the department may not withhold the entirety of the recording under section 552.101 in conjunction with section 1701.661(f). However, portions of the recording involve an additional subject and, based on your representations, we understand you have not received written authorization for release from the remaining subject. Accordingly, the department must withhold the portions of the recording that involve the remaining subject of the recording, which we have indicated, under section 552.101 in conjunction with section 1701.661(f).

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 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. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transactions between individual and governmental body protected under common-law privacy). Further, the Third Court of Appeals has concluded the dates of birth of public citizens 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.). However, we note the requestor has a right of access to information pertaining

to her client that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of information pertaining to the requestor's client, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release.<sup>1</sup> Gov't Code § 552.130(a). We note, however, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the information pertaining to the requestor's client, the department must withhold any visible license plates, vehicle registration stickers, and driver's licenses, as well as any audible license plate and driver's license numbers, under section 552.130 of the Government Code.

In summary, the department must withhold the portions of the recording that involves the remaining subjects of the recordings, 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 information pertaining to the requestor's client, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information pertaining to the requestor's client, the department must withhold any visible license plates, vehicle registration stickers, and driver's licenses, as well as any audible license plate and driver's license numbers, under section 552.130 of the Government Code. The department must release the remaining information.<sup>2</sup>

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->

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<sup>1</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, 480 (1987), 470 (1987).

<sup>2</sup> We note the information being released includes information that may be confidential with respect to the general public. Accordingly, if the department receives another request for this information from an individual other than this requestor or his client, the department must again seek a ruling from this office.

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,



Sean McCormick  
Attorney  
Open Records Division

SMC/eb

Ref: ID# 810800

Enc. Submitted documents

c: Requestor  
(w/o enclosures)