



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 25, 2020

Ms. Izzy Anderson
Assistant General Counsel
Houston Community College
P.O. Box 667517
Houston, TX 77266-7517

OR2020-06073

Dear Ms. Anderson:

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# 813417 (RR_1784 & RR_1785).

The Houston Community College (the "college") received two requests from different requestors for information related to a specified incident.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the college received the two requests for information in close temporal proximity. Further, we note the college requested rulings from this office under section 552.301 of the Government Code on January 3, 2020, and January 13, 2020. We note you have indicated portions of the information to be withheld from the first requestor under section 552.108 of the Government Code, but don not seek to withhold this same information from the second requestor. Thus, we assume the college will release the information at issue to the second requestor. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision

¹ The college states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *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 overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

No. 463 at 1-2 (1987). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Although you raise section 552.108 with respect to the inconsistently marked information, this section is a discretionary exception and does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, the college may not withhold information from one requestor under section 552.108 that it has released to the other requestor. Accordingly, with respect to the information the college releases to either requestor, the college may not withhold such information from the other requestor under section 552.108 of the Government Code. However, we will consider your argument under section 552.108 with respect to the information you seek to withhold from both requestors. Finally, because section 552.101 of the Government Code can make information confidential, we will address the applicability of this section to the information at issue.

Next, we note the submitted information includes police officers' body worn camera video 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 provides, in relevant part, the following:

(a) 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, neither requestor provides the requisite information under section 1701.661(a) for the submitted body worn camera video recordings. As this information was not properly requested pursuant to chapter 1701 of the Occupations Code, it need not be released.² We note, pursuant to section 1701.661(b), a "failure to provide all the information required by [s]ubsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information." *Id.* § 1701.661(b).

² As we are able to make this determination, we need not address the arguments against disclosure of 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. This exception encompasses information made confidential by other statutes, including section 418.182 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Section 418.182 provides, in relevant part:

(a) [i]nformation . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact the information may be related to a security system does not make such information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting section 418.182 must adequately explain how the responsive records fall within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the submitted information includes video footage from surveillance cameras in a secure parking lot of a college facility. You state the surveillance video system is part of the college’s security system, which is necessary to protect the college and the public “from terrorism and other criminal activity.” You further state the video contains information that “would enable an individual with access to the footage to determine the location, angles, vantage point, range, and clarity of images of security cameras recorded by the [c]ollege’s security system.” Upon review, we find the video recordings at issue relate to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras’ capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the college must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.³

Section 552.101 of the Government Code also 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 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-

³ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, with the exception of the second requestor's client's date of birth, to which the second requestor has a right of access pursuant to section 552.023 of the Government Code and which may not be withheld from the second requestor, the college must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov't Code § 552.023(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).

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.⁴ *See* Gov't Code § 552.130. We note, because section 552.130 protects privacy interests, the second requestor has a right of access to his client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the motor vehicle record information belonging to the second requestor's client, which the college must release to that requestor, the college must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the submitted body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code and they need not be released. The college must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. With the exception of the second requestor's client's date of birth, the college must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the motor vehicle record information belonging to the second requestor's client, which the college must release to that requestor, the college must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The college must release the remaining information.

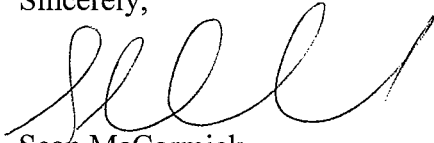
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁴ 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).

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 'SMC', with a long horizontal flourish extending to the right.

Sean McCormick

Attorney

Open Records Division

SMC/gw

Ref: ID# 813417

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)