



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2020

Mr. Alexander Garcia
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2020-07157

Dear Mr. Garcia:

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# 815379 (CCPD File Number JCor6).

The Corpus Christi Police Department (the "department") received a request for body worn camera recordings pertaining to a particular incident. 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 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 department is not required to release it in response to this request.¹

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information made confidential by other statutes. The submitted information consists of recordings from police officers' body worn cameras. 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. *See* Occ. Code § 1701.661(a). We note the requestor in this instance provided the requisite information. 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, 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 portions of the recordings at issue were made in a private space. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). You state the department does not have permission for release from all subjects of the recordings made in private spaces. *See id.* § 1701.661(f). Accordingly, we find the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.² However, the remainder of the recordings at issue were not made in a private space for the purposes of section 1701.661(f). We also understand the department to argue the remaining

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

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

portions of the recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and that did not result in an arrest as a result of that conduct. Upon review, we find the department failed to establish the applicability of section 1701.661(f) to the remaining information at issue and it may not be withheld under section 552.101 of the Government Code on that basis.

Some of the remaining information may be subject to section 552.1175 of the Government Code.³ Section 552.1175 of the Government Code excepts from disclosure 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). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Thus, to the extent the information we have indicated relates to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code.⁴ If the individual whose information is at issue is not currently a licensed peace officer or does not elect to restrict access to his information in accordance with section 552.1175(b), the indicated information may not be withheld under section 552.1175.

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. 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. *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 has a right of access to his date of birth 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); ORD 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning

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).

⁴ As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

themselves). Thus, with the exception of the requestor's date of birth, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common law privacy. Further, upon review, we conclude the information we have indicated meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note a portion of the information we have indicated pertains to an individual who may be de-identified under section 552.1175 of the Government Code, and whose privacy interests would thus be protected. Accordingly, to the extent the information we have indicated relates to an identifiable individual, the department must withhold the indicated 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 information of an identifiable individual or is of legitimate public interest. Accordingly, the department 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. *See* Gov't Code § 552.130. Therefore, the department must withhold all visible license plates, license plate numbers and states, and vehicle registration stickers, as well as any audible license plate states and license plate and driver's license numbers, 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 department is not required to release it in response to this request. The department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the information we have indicated relates to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code. With the exception of the requestor's date of birth, the department must withhold all public citizens' dates of birth, and to the extent the indicated information relates to an identifiable individual, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold all visible license plates and vehicle registration stickers, as well as any audible license plate states and license plate and driver's license numbers, under section 552.130 of the Government Code. The department 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,

A handwritten signature in black ink, appearing to read "Erin Groff". The signature is fluid and cursive, with the first name "Erin" and last name "Groff" clearly distinguishable.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/rm

Ref: ID# 815379

Enc. Submitted documents

c: Requestor
(w/o enclosures)