



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 25, 2020

Mr. David Ritter
Counsel for the City of Van Alstyne
Brown and Hoffmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2020-09208

Dear Mr. Ritter:

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# 817768.

The Van Alstyne Police Department (the "department"), which you represent, received a request for all disciplinary records involving a named police officer. You state the department released some information to the requestor. You claim the submitted body worn camera recording was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 ad 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you argue the submitted information includes a police officer's body worn camera recording. 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:

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 assert the information at issue was not properly requested pursuant to section 1701.661(a), we find this information does not consist of a body worn camera recording. Therefore, the submitted video recording is not subject to section 1701.661 of the Occupations Code.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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. 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.). The doctrine of common-law privacy protects a compilation of an individual’s criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. Upon review, we agree the information you marked, and we indicated, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information you marked, and we indicated, under section 552.101 of the Government Code in conjunction with 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*. Upon review, we determine the department must withhold all audible and visible license plates and driver’s license plate numbers and states within the submitted video recording under section 552.130 of the Government Code. However, we find you failed to demonstrate the remaining information at issue is subject to section 552.130. Therefore, the department may not withhold the remaining information under section 552.130 of the Government Code.

In summary, the department must withhold the information you marked, and we indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold all audible and visible license plates and driver’s license

numbers and states within the submitted video recording 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,

Katie Stallcup
Attorney
Open Records Division

AKS/jxd

Ref: ID# 817768

Enc. Submitted documents

c: Requestor
(w/o enclosures)