



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 26, 2020

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2020-09280

Dear Mr. Kopp:

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# 820547.

The City of San Antonio (the "city") received a request for information pertaining to a specified motor vehicle accident. You state the city released information to the requestor, but made redactions as permitted by sections 552.130(c) and 552.136(c) of the Government Code without requesting a decision from this office. We note the city also redacted information pursuant to Open Records Letter No. 2018-12961 (2018).¹ Pursuant to sections 552.130(d) and 552.136(d) the requestor has asked this office to review the information redacted by the city and render a decision as to whether it is excepted from disclosure under sections 552.130(a) and 552.136(b) of the Government Code. We understand the city also claims some of the information at issue is excepted from disclosure under section 552.101 of the Government Code. We have considered the city's position and reviewed the representative sample of information.²

¹ Open Records Letter No. 2018-12961 is a previous determination authorizing the city to withhold, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, the originating telephone number of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code without the necessity of requesting an attorney general's decision. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note the requested information includes 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 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, the requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. However, 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).

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. 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note, however, the requestor is the authorized representative of two of the individuals whose information is at issue. *See* Gov't Code § 552.023(a) ("person or 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). However, we are unable to determine whether some of the information at issue relates to the requestor's clients. Therefore, we must rule conditionally. To the extent the information we marked relates to the requestor's client, the city may not withhold this information under section 552.101 of the Government Code in conjunction with common law privacy. To the extent the information we marked does not relate to the requestor's client, the city must withhold this information under section 552.101 of the Government Code in conjunction with common law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 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. Gov't Code § 552.130. We note, because section 552.130 protects privacy interests, the requestor may have a right of access to the motor vehicle record information at issue under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. However, because we are unable to determine whether the information at issue belongs to the requestor's clients, we must rule conditionally. To the extent the motor vehicle record information you marked belongs to the requestor's client, the requestor has a right of access under section 552.023 to this information, and the city may not withhold such information under section 552.130 from the requestor. To the extent the motor vehicle record information you marked does not belong to the requestor's client, the city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We understand the employee SAP numbers you marked can be used by city employees to obtain certain goods. Accordingly, we agree this information constitutes access device numbers for purposes of section 552.136. Therefore, the city must withhold the information you marked under section 552.136 of the Government Code.

In summary, as the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. To the extent the information we marked does not relate to the requestor's client, the city must withhold this information under section 552.101 of the Government Code in conjunction with common law privacy. To the extent the motor vehicle record information you marked does not belong to the requestor's client, the city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The city must withhold the information you marked under section 552.136 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,

Jahna Ward
Assistant Attorney General
Open Records Division

JW/jlbm

Ref: ID# 820547

Enc. Submitted documents

c: Requestor
(w/o enclosures)