



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2020

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

OR2020-09986

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# 819448 (Ref. No. GPCA 20-0020).

The Grand Prairie Police Department (the "department") received a request for body worn camera recordings pertaining to a specified report. 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 representative sample of information.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." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. We note the submitted information consists of recordings from police officers' body worn cameras. 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 provides the requisite information for the body worn camera recordings at issue. The submitted recordings reflect they were required to be made by the law or the policies of the department and relate to a law enforcement purpose. *See id.* § 1701.661(h). We note, however, sections 1701.661(c) and 1701.661(d) of the Occupations Code provide:

¹ 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.

(c) Except as provided by Subsection (d), information recorded by a body worn camera and held by a law enforcement agency under this subchapter is not subject to the requirements of Section 552.021, Government Code.

(d) Information that is or could be used as evidence in a criminal prosecution is subject to the requirement of Section 552.021, Government Code.

Id. § 1701.661(c)-(d). You state the submitted recordings pertain to “an incident in which police responded to a call which was not criminal in nature.” However, you also state, and the information at issue reflects, the recordings depict the department’s response to a call regarding “an individual . . . being held against her will.” Upon review, we find you have failed to demonstrate the body worn camera recordings at issue could not be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Therefore, we conclude the recordings at issue are not confidential under section 1701.661(c) of the Occupations Code and the department may not withhold them under section 552.101 of the Government Code on that basis.

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). Further, 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.). However, we note the requestor has a right of access to information pertaining to herself 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 himself). 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 the requestor’s date of birth, the department must withhold all audible dates of birth and the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from public disclosure information relating to a motor vehicle operator’s or driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.² *See* Gov’t Code § 552.130. We note section 552.130 is designed to protect the

² 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).

privacy of individuals. Thus, the requestor has a right of access to her own motor vehicle record information and it may not be withheld from her under section 552.130. *See id.* § 552.023; ORD 481 at 4. Accordingly, with the exception of the information pertaining to the requestor, the department must withhold all visible license plates and registration stickers within the remaining information under section 552.130 of the Government Code.

In summary, with the exception of the requestor's date of birth, the department must withhold all audible dates of birth and 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, the department must withhold all visible license plates and registration stickers within the remaining information under section 552.130 of the Government Code. The department must release the remaining information to this requestor.³

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/rm

Ref: ID# 819448

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ As noted above, the requestor has a special right of access to some of the information being released in this instance. *See Gov't Code* § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.