



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2020

Ms. Lizbeth Islas Plaster
City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2020-10389

Dear Ms. Plaster:

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# 820476 (Ref. No. P036363-012120).

The City of Lewisville (the "city") received a request for information related to a specified vehicle accident. You state the city will release some information to the requestor. You claim some of 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 the submitted information includes police officers' body worn camera recordings. 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. 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) for portions of the submitted body worn camera recordings. As these portions of the submitted body worn camera recordings, which we indicated, 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.¹ 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). Further, we note the requestor provided the requisite information under section 1701.661(a) for the remaining body worn camera recordings. However, section 1701.661(f) provides:

A law enforcement agency may not release any portion of a recording made in a private space, 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 remaining body worn camera recordings were made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). We have no indication the city has permission for release from the subject of the portions of the recordings made in the private space at issue. *See id.* § 1701.661(f). Accordingly, we find the city must withhold the portions of the remaining body worn camera recordings, which we indicated, made in a private space under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

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. 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.). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 600 (1992) (personal financial information includes choice of insurance carrier). We note the requestor has a right of access to his client’s personal information and date of birth, and this information may not be withheld from him under common-law privacy. *See* Gov’t Code § 552.023(a) (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

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

Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find a portion of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, with the exception of the information pertaining to the requestor's client, the city must withhold all audible and visible public citizens' 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 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.² See Gov't Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. See *id.* § 552.023(a); ORD 481 at 4. Therefore, with the exception of the motor vehicle record information belonging to the requestor's client, the city must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

Section 552.136 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"). Accordingly, the city must withhold the credit card number we indicated under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See *id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses we indicated under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, as the portions of the submitted body worn camera recordings we indicated 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. The city must withhold the portions of the remaining body worn camera recordings made in a private space we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. With the exception of information pertaining to the requestor's client, the city must withhold all audible and visible public citizens' 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 motor vehicle record information belonging to the requestor's client, the city must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code. The city

² 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, 480 (1987), 470 (1987).

must withhold the credit card number we indicated under section 552.136 of the Government Code. The city must withhold the personal e-mail addresses we indicated under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/rm

Ref: ID# 820476

Enc. Submitted documents

c: Requestor
(w/o enclosures)