



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 14, 2020

Mr. Robert Carroll  
Senior Assistant City Attorney  
City of Odessa  
P.O. Box 4398  
Odessa, Texas 79760-4398

OR2020-10848

Dear Mr. Carroll:

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# 821970 (COD Req. ID# P002285-012120).

The City of Odessa (the "city") received a request for information pertaining to a specified incident. The city states it has released some information to the requestor. The city claims some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. Additionally, the city claims the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the city's arguments and reviewed the submitted information.

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. The submitted information includes recordings from law enforcement officer's body worn cameras. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion . . . of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written

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<sup>1</sup> We note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, as sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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.

Occ. Code § 1701.661(f). The city states the submitted body worn camera recordings pertain to the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. Additionally, the city states it has not received written authorization for release from all of the subjects of the recordings at issue. *See id.* Accordingly, we find the city must withhold the submitted body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.<sup>2</sup>

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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). Thus, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the city has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any of the remaining information 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. *See* Gov't Code § 552.130. Accordingly, the city must withhold all license plate information under section 552.130 of the Government Code. However, no portion of the remaining information constitutes motor vehicle record information subject to section 552.130, and the city may not withhold any of it on this basis.

In summary, the city must withhold the submitted body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold all license plate information under section 552.130 of the Government Code. The city must release the remaining information.

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<sup>2</sup> As we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

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,

Gerald Arismendez  
Assistant Attorney General  
Open Records Division

GAA/rm

Ref: ID# 821970

Enc. Submitted documents

c: Requestor  
(w/o enclosures)