



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2020

Ms. Leslie A. Whitten
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2020-10918

Dear Ms. Whitten:

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# 822387 (ORR# A20-000200).

The City of College Station (the "city") received a request for certain information regarding case number 2020-000458. You state the city released some information to the requestor, including the CR-3 accident report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c) (providing for the release of accident report to person or entity listed under this subsection). You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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 consists of peace 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(a) of the Occupations Code provides the following:

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 one of the submitted body worn camera recordings. As the body worn camera recording we indicated was 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). We note the instant request includes the information required by section 1701.661(a) with respect to the remaining body worn camera recordings. However, we also note section 1701.661(f) of the Occupations Code provides, in part, the following:

A law enforcement agency may not release any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, 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(e) (defining “private space” for purposes of section 1701.661(f)). Accordingly, we find the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.² Additionally, you state the remaining video recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in an arrest. Upon review, however, we find you have failed to demonstrate the remaining information is confidential under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code, and the city may not withhold it on this 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

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

² As we are able to make this determination, we need not address the arguments against disclosure of this information.

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). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. 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, e.g., Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note, however, the requestor has a right of access to her client's personal information and this information may not be withheld from her 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 Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

Upon review, we find some of the remaining information, which we indicated, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information pertaining to the requestor's client, the city must withhold all public citizens' dates of birth and the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any of the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest, and the city may not withhold it under section 552.101 in conjunction with common-law privacy.

We note portions of the remaining information are subject to section 552.130 of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We note, however, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to her client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. See *id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the information pertaining to the requestor's client,

³ The Office of the Attorney General will raise 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).

the city must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

In summary, as the body worn camera recording we indicated was 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 information 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 the information pertaining to the requestor's client, the city must withhold all 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 information pertaining 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 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/be

Ref: ID# 822387

Enc. Submitted documents

c: Requestor
(w/o enclosures)