



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2020

Mr. Robert G. Schleier, Jr.
Counsel for the the City of Kilgore
Law Office of Robert G. Schleier, Jr.
116 North Kilgore Street
Kilgore, Texas 75662

OR2020-13588

Dear Mr. Schleier, Jr.:

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# 830538.

The Kilgore Police Department (the "department") received a request for all information pertaining to a specified accident. You state you have released some information. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim 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. Section 552.101 encompasses chapter 1701 of the Occupations Code. You claim the submitted body worn camera recordings are excepted from disclosure pursuant to section 1701.661(f) of the Occupations Code. Section 1701.661(1) 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 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). You state the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and that did not result in an arrest. You state the department does not have permission for release from all of the subjects of the recordings at issue. *See id.* Based on your representations, we find the department 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.

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 information made confidential by other statutes, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See Open Records Decision No. 649 (1996)*. You indicate the City of Kilgore is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. However, you do not state whether the telephone number at issue was furnished by a 9-1-1 service supplier. Thus, we rule conditionally. To the extent the telephone number at issue was furnished by a 9-1-1 service supplier, the telephone number at issue must be withheld under section 552.101 of the Government Code. However, if the telephone number was not furnished by a 9-1-1 service supplier, the telephone number at issue may not be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also 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 court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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 department must withhold the information you marked 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 a 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. Upon review, we find the department must withhold the information you marked, and we marked, under section 552.130 of the Government Code.

In summary, the department 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. To the extent the telephone number at issue was furnished by a 9-1-1 service supplier, the telephone number at issue must be withheld under section 552.101 of the Government Code. The department must withhold the information you marked under

section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you marked, and we marked, under section 552.130 of the Government Code. The department 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,

Melanie Villars
Assistant Attorney General
Open Records Division

MJV/jlbm

Ref: ID# 830538

Enc. Submitted documents

c: Requestor
(w/o enclosures)