



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 8, 2020

Mr. Chuong Q. Phung  
Assistant City Attorney  
City of Grand Prairie  
P.O. Box 534045  
Grand Prairie, Texas 75053-4045

OR2020-15575

Dear Mr. Phung:

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# 829564 (Ref. No. GPCA #20-0066).

The Grand Prairie Police Department (the "department") received a request for information related to a specified vehicle accident, including call logs, audio recordings, video recordings, and related reports. 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 information.

Initially, we note you have not submitted information responsive to all the categories listed in the request for information. Although you state the department has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information the department has submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the types of information it submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to the remaining portions of the request existed on the date the department received the present request for information, we assume the department has released it to the requestor. If the department has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body

concludes no exceptions apply to requested information, it must release information as soon as possible).

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. 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) provides:

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). Upon review of the information at issue, we determine the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recordings at issue. We note, however, 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 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). You state the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Upon review, we note the requestor’s client is one of the subjects of the recordings. Thus, we find the requestor’s client has consented to release of the recordings to the requestor for the purposes of subsection (f) and the department may not withhold the entireties of the recordings under section 552.101 in conjunction with section 1701.661(f). However, portions of the recordings involve other subjects and, based on your representations, we understand you have not received written authorization for release from the remaining subjects. Accordingly, the department must withhold the portions of the recordings that involve the remaining subjects of the recordings, which we indicated, 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. 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 Nos. 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). 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.).

Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of the remaining information are subject to section 552.130 of the Government Code.<sup>1</sup> 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) (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); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Accordingly, with the exception of the information pertaining to the requestor's client, the department must withhold any visible license plates, vehicle registration stickers, vehicle identification numbers, and driver's license information, as well as any audible license plate numbers, classes, or expiration dates, 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”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. See

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<sup>1</sup> 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 (1987), 480 (1987), 470 (1987).

Open Records Decision No. 684 at 9 (2009). Accordingly, the department must withhold the information we indicated under section 552.136 of the Government Code.

In summary, the department must withhold the portions of the recordings that involve the remaining subjects of the recordings, which we indicated, under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must withhold 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 department must withhold any visible license plates, vehicle registration stickers, vehicle identification numbers, and driver's license information, as well as any audible license plate numbers, classes, or expiration dates, under section 552.130 of the Government Code. The department must withhold the information we indicated under section 552.136 of the Government Code. The department must release the remaining information.<sup>2</sup>

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/be

Ref: ID# 829564

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.