



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 14, 2020

Ms. Heather Silver  
Assistant City Attorney  
City of Dallas  
1400 South Lamar, 6<sup>th</sup> Floor, 6W  
Dallas, Texas 75215

OR2020-17441

Dear Ms. Silver:

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# 835650 (Ref. No. D009771-042120).

The Dallas Police Department (the "department") received a request for information related to a particular internal affairs investigation, as well as several categories of information related to certain subsets of sustained policy violations and disciplinary actions taken against police officers during a particular time period. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2020-12185 (2020). In that ruling, we ruled the submitted body worn camera recordings were not properly requested by the requestor pursuant to chapter 1701 of the Occupations Code and they need not be released, and the department: (1) must withhold certain information under section 552.101 of the Government Code in conjunction with

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

section 2721(a) of title 18 of the United States Code; (2) must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (3) must withhold certain fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (4) must withhold all public citizens' dates of birth and certain information under section 552.101 of the Government Code in conjunction with common-law privacy; (5) must withhold certain information under section 552.117(a)(2) of the Government Code; (6) must withhold certain motor vehicle record information under section 552.130 of the Government Code; (7) must withhold the employee identification numbers it marked and all insurance policy numbers under section 552.136 of the Government Code; (8) must withhold certain identifying information of the undercover officer under section 552.152 of the Government Code; and (9) must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law. However, we note the requestor in this instance is the authorized representative of an individual whose information may have been at issue in the previous ruling. Thus, the requestor has a right of access to his client's information pursuant to section 552.023 of the Government Code and it may not be withheld from him on the basis of section 552.101 in conjunction with common-law privacy or section 560.003 of the Government Code or sections 552.117, 552.130, 552.136, or 552.147 of the Government Code. *See Gov't Code* § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is 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). Accordingly, we find the circumstances have changed with respect to the information of the requestor’s client, and the department may not rely on *Open Records Letter No. 2020-12185* as a previous determination in regard to that information. *See Open Records Decision No. 673 at 7 8 (2001)* (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Therefore, the department may not withhold the information of the requestor’s client under section 552.101 in conjunction with common-law privacy or in conjunction with section 560.003 of the Government Code or sections 552.117, 552.130, 552.136, or 552.147 in accordance with *Open Records Letter No. 2020-12185*, but instead must release this information to this requestor pursuant to section 552.023 of the Government Code. However, as to the remaining information that was the subject of the prior ruling, we have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Thus, the department may continue to rely on *Open Records Letter No. 2020-12185* as a previous determination and withhold or release this remaining information in accordance with that ruling. ORD 673.

Next, we note the submitted information includes police 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 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). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and they need not be released.<sup>2</sup> 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).

Next, we note some of the remaining information is subject to section 552.022 of the Government Code, which provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov’t Code § 552.022(a)(1). The information at issue contains a completed internal affairs investigation subject to section 552.022(a)(1), which we have marked and indicated. This information must be released unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* Although you assert the information at issue is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000)

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<sup>2</sup> As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

(discretionary exceptions generally). Therefore, none of the information subject to section 552.022(a)(1) may be withheld under section 552.103. However, as sections 552.101, 552.117, 552.130, and 552.136 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the information at issue.<sup>3</sup> Further, we will consider your argument under section 552.103 for the information not subject to section 552.022.

Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation demonstrating, a lawsuit styled *Trotter v. City of Dallas*, Docket No. 3:19-CV-01327 was pending against the department in the United States District Court for the Northern District of Texas, Dallas Division, at the time of the receipt of the present request for information. You state the information that is not subject to section 552.022 of the Government Code relates to the pending litigation because it pertains to the allegation that is the subject of the lawsuit. Based on your representations and our review, we find the department was a party to pending litigation at the time it received the present request and the information at issue is related to the pending litigation for the purposes of section 552.103.

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<sup>3</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, 480 (1987), 470 (1987).

We note, however, the opposing party has seen or had access to some of the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, once the opposing party has seen or had access to information relating to the litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Upon review, we find a portion of the information at issue, which we have marked, has been seen by the opposing party and may not be withheld under section 552.103(a). Therefore, with the exception of the information we have marked for release, the department may withhold the information that is not subject to section 552.022 under section 552.103 of the Government Code. Further, we note the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

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 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office also 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. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 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). A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. 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 conclude some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold all public citizens' dates of birth and the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We have indicated information under section 552.117 that consists of the personal information of department employees and the information is held in the employment context. In this instance, however, it is unclear whether the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the department must withhold the information we have indicated under section 552.117(a)(2) of the Government Code. Conversely, to the extent the individuals whose information is at issue are not licensed peace officers as defined by article 2.12, then the department may not withhold the information at issue under section 552.117(a)(2).

If the information we have indicated under section 552.117 pertains to individuals who are not licensed peace officers, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individuals at issue are not licensed peace officers as defined by article 2.12 and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information at issue under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue are not licensed peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, the department may not withhold the information at issue under section 552.117(a)(1).

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 department must withhold the motor vehicle record information we have marked 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). The department states the employee identification numbers it marked are used in conjunction with one additional digit to access city credit union bank accounts. Therefore, the department must withhold the employee identification numbers it indicated under section 552.136 of the Government Code.

In summary, with the exception of the information that must be released to this requestor pursuant to section 552.023 of the Government Code, the department may continue to rely on Open Records Letter No. 2020-12185 as a previous determination and withhold or release the information at issue in accordance with that ruling. As the body worn camera recordings at issue 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. With the exception of the information we have marked for release, the department may withhold the information that is not subject to section 552.022 under section 552.103 of the Government Code. The department must withhold all public citizens' dates of birth and the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common law privacy. To the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the department must withhold the information we have indicated under section 552.117(a)(2) of the Government Code. To the extent the individuals at issue are not licensed peace officers as defined by article 2.12 and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the indicated information under section 552.117(a)(1) of the Government Code. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must withhold the employee identification numbers it indicated under section 552.136 of the Government Code. The department must release the remaining information.<sup>4</sup>

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<sup>4</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, the department must again seek a decision from this office if it receives another request for the same information from another requestor. We also note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/be

Ref: ID# 835650

Enc. Submitted documents

c: Requestor  
(w/o enclosures)