



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2020

Mr. Jeffrey C. Monk
Administration Manager
Houston Police Department
1200 Travis, 10th Floor
Houston, Texas 77002-6000

OR2020-21235

Dear Mr. Monk:

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# 842181 (ORU No. 20-05909).

The Houston Police Department (the "department") received a request for body worn camera recordings pertaining to a specified case number. 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 representative sample of information.¹

Initially, we note the requestor seeks only body worn camera recordings pertaining to the specified case number. You have submitted additional information that does not consist of body worn camera recordings, and this information is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

¹ 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 552.101 of the Government Code exempts 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 section 143.1214 of the Local Government Code, which provides:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department’s use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or
- (3) in accordance with Subsection (c).

(c) The department head or the department head’s designee may forward a document that relates to a disciplinary action against a fire fighter or police officer to the [civil service] director or the director’s designee for inclusion in the fire fighter’s or police officer’s personnel file maintained under Sections 143.089(a)-(f) [of the Local Government Code] only if:

- (1) disciplinary action was actually taken against the fire fighter or police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov’t Code § 143.1214(b)-(c). You state the responsive information pertains to an open and active investigation by the department’s Internal Affairs Division of alleged misconduct by a police officer. You also state the information is maintained in the department’s investigatory file and is not part of the officer’s civil service personnel file. You also state the requestor is not an employee of another law enforcement agency, fire department, or the office of a district or United States attorney. *See id.* § 143.1214(b). However, upon review, we find the responsive information consists of body worn camera recordings, which are maintained independently from the police officer’s internal file. In this instance, the requestor has specifically requested this information, which is maintained for law enforcement purposes separate and apart from any internal files. The department may not engraft the confidentiality afforded to records under section 143.1214 to records that exist independently of the internal files. Accordingly, the responsive information is not confidential under section 143.1214 of the Local Government Code and the department may not withhold it under section 552.101 of the Government Code on that basis.

We note portions of the responsive information are subject to section 552.130 of the Government Code.² 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 his motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him 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, the department must withhold all visible license plates and registration stickers, and audible license plate numbers and driver's license numbers under section 552.130 of the Government 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 audible public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the information pertaining to the requestor, the department must withhold all visible license plates and registration stickers, and audible license plate numbers and driver's license numbers under section 552.130 of the Government Code. The department must withhold the audible public citizens' date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining responsive information.³

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

² 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).

³ We note the requestor has a right of access to some of the information being released. 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.

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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/gw

Ref: ID# 842181

Enc. Submitted documents

c: Requestor
(w/o enclosures)