



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 2, 2020

Ms. Angela Albers  
Criminal District Attorney  
Wood County  
P.O. Box 689  
Quitman, Texas 75783

OR2020-22144

Dear Ms. Albers:

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# 842878.

The Wood County Sheriff's Office (the "sheriff's office") received a request for the incident report and body worn camera recordings regarding a specified incident. You state the sheriff's office released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the submitted information includes 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). 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.<sup>1</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 must address the obligations of the sheriff’s office under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov’t Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). You state the sheriff’s office received the request for information on June 1, 2020. You do not inform us the sheriff’s office was closed for business on any of the days at issue. Thus, as you acknowledge, the sheriff’s office was required to provide the information required by section 552.301(b) by June 15, 2020. However, the envelope in which you requested a ruling from this office has two meter marks: the first meter mark is June 3, 2020, and the second meter mark is June 16, 2020. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Because of this conflicting information, we are unable to determine whether the sheriff’s office requested a ruling from this office within ten business days of receiving the request for information. *See id.* § 552.301(b). We therefore find the sheriff’s office has failed to establish that it complied with the procedural requirements of section 552.301 in requesting a ruling from this office. *See id.*

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Although you claim the information at issue is excepted from disclosure under section 552.108 of the Government Code, we find you failed to establish a compelling reason to address your claim under this exception. However, because section 552.101 of the Government Code

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<sup>1</sup> As we are able to make this determination, we need not address the argument against disclosure of this information.

can provide compelling a reason to overcome the presumption of openness, we will consider the applicability of this section to the information at issue.<sup>2</sup>

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. Section 552.101 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. *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.). However, we note the requestor has a right of access to his own date of birth and his minor child’s date of birth pursuant to section 552.023 of the Government Code, and this information may not be withheld from him 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). Accordingly, with the exception of the dates of birth belonging to the requestor and his minor child, the sheriff’s office must withhold all public citizens’ dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, 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 dates of birth belonging to the requestor and his minor child, the sheriff’s office must withhold all public citizens’ dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff’s office must release the remaining information.<sup>3</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.

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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup> We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); *see also* ORD 481 at 4. Accordingly, if the sheriff’s office receives another request for this same information from a different requestor, it must again seek a ruling from this office.

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/jxd

Ref: ID# 842878

Enc. Submitted documents

c: Requestor  
(w/o enclosures)