



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2020

Mr. Kevin Bailey
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 846682

OR2020-24602

Dear Mr. Bailey:

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# 846682 (ID# M030794-070720).

The City of Midland (the "city") received a request for seven categories of information pertaining to a specified incident involving two named individuals. You state you have released some of the requested information. You claim some of 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.

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. This section encompasses information made confidential by other statutes. The submitted information contains recordings from city police officers' body worn cameras. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code states the information a requestor must provide when seeking a body worn camera recording. *See* Occ. Code § 1701.661(a). We note the requestor provides the requisite information for the body worn camera recordings at issue. 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 Exhibits B, C, and E pertain to the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. You also state you have not received a written authorization for release from the subject of the recordings. *See id.* Accordingly, we find the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.¹

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country.² Gov't Code § 552.130(a)(1), (2). We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to the motor vehicle record requestor's client information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to 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 individual requests information concerning herself). Accordingly, with the exception of the motor vehicle record information belonging to the requestor's client, the city must withhold all visible and audible license plate numbers and audible driver 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, 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). However, we note the information at issue pertains to individuals who are de-identified and whose privacy interests are, thus, protected. Accordingly, we find the city has failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

² 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).

In summary, the city must withhold Exhibits B, C, and E under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. With the exception of the motor vehicle record information belonging to the requestor's client, the city must withhold all visible and audible license plate numbers and audible driver license numbers under section 552.130 of the Government Code. The city 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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/be

Ref: ID# 846682

Enc. Submitted documents

c: Requestor
(w/o enclosures)