



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 5, 2020

Mr. Robert E. Etlinger
Assistant County Attorney
Guadalupe County
211 West Court Street
Seguin, Texas 78155-5779

OR2020-27861

Dear Mr. Etlinger:

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# 852814.

The Guadalupe County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for information pertaining to two specified case numbers. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is 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). In this instance, the requestor does not provide the requisite information under section 1701.661(a). As the information at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and the sheriff's office need not release the information we indicated.¹ *See generally King v. Paxton*, 576 S.W.3d 881 (Tex. App.—Austin 2019, pet. denied). 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.” Occ. Code § 1701.661(b).

Section 552.108 of the Government Code provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)-(b). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not inform us the information at issue pertains to a specific ongoing criminal investigation or prosecution conducted by the sheriff's office, nor have you explained its release would interfere in some way with the detection, investigation, or prosecution of crime by the sheriff's office. You state the information relates to an investigation being conducted by the Frisco Police Department (the “department”). However, you have not provided a representation from the department, nor has the department provided a representation to this office, stating it wishes to withhold the information at issue. Thus, we find you have failed to demonstrate the applicability of either subsection 552.108(a)(1) or 552.108(b)(1). Therefore, the sheriff's office may not withhold any portion of the remaining information under section 552.108 of the Government Code.

¹ As we are able to make this determination, we need not address your argument against disclosure of this 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.”² Gov’t Code § 552.101. This section 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.). However, we note the requestor has a right of access to information pertaining to himself and his minor children that would otherwise be confidential under common-law privacy. *See* Gov’t Code § 552.023 (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 individual requests information concerning himself). Accordingly, the sheriff’s office must withhold the dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator’s or driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov’t Code § 552.130. We note section 552.130 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to his own motor vehicle record information and it may not be withheld from him under section 552.130. *See id.* § 552.023; ORD 481 at 4. Accordingly, the sheriff’s office must withhold the visible license plate and registration sticker in the remaining video recording at issue and, to the extent such information does not pertain to the requestor, the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, as the information at issue was not properly requested pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the sheriff’s office need not release the information we indicated. The sheriff’s office must withhold the dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff’s office must withhold the visible license plate and registration sticker in the remaining video recording at issue and, to the extent such information does not pertain to the requestor, the motor vehicle record information we marked under section 552.130 of the Government Code. The sheriff’s office must release the remaining information to this requestor.³

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 special right of access to the information being released in this instance. *See* Fam. Code § 261.201(k); *see also* Gov’t Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the sheriff’s office receives another request for this information from a different requestor, the sheriff’s office must again seek a ruling from this office.

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/rm

Ref: ID# 852814

Enc. Submitted documents

c: Requestor
(w/o enclosures)