



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 3, 2022

Ms. Heather Silver  
Assistant City Attorney  
City of Dallas  
1400 Botham Jean Boulevard  
Dallas, Texas 75215

OR2022-00136

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# 920475 (ORR# D014251).

The Dallas Police Department (the "department") received a request for all records pertaining to a specified incident involving a named officer. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, 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, 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) provides:

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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.

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 the department need not release it.<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).

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 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

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

Fam. Code § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). You assert the remaining information is confidential under section 58.008(b) of the Family Code. Upon review, we find some of the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). You state that none of the exceptions in section 58.008 apply. Accordingly, the department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>3</sup> However, we find the remaining information consists of internal administrative records that do not constitute juvenile law enforcement records for purposes of section 58.008(b). Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides, in relevant part:

[T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state the remaining information was used or developed in an investigation of alleged child abuse or neglect by the department under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). However, we find the remaining information relates to an administrative investigation of the named officer by the department. Further, we find you have failed to demonstrate any of the remaining information at issue was used or

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information or address the applicability of section 1701.661(a) of the Occupations Code to the remaining recordings. *See generally* Occ. Code § 1701.661(a), (e).

developed in an investigation of alleged or suspected child abuse, or consists of a report of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Therefore, the remaining information is not confidential under section 261.201 of the Family Code, and the department may not withhold any portion of it under section 552.101 of the Government Code on that basis.

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 current or honorably retired peace officer, as well as information that reveals whether the current or honorably retired peace officer has family members, regardless of whether the current or honorably retired peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2); *id.* §552.003(1-b) (defining "honorably retired" for purposes of the Act). As noted above, for purposes of section 552.117, "family member" means a spouse, minor child, or adult child who resides in the person's home. *See id.* § 552.117(c). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* ORD 506 at 5-7. In this instance we are unable to determine whether the individual whose information is at issue is a currently-licensed or honorably retired peace officer; therefore, we must rule conditionally. If the individual at issue is a currently-licensed or honorably retired peace officer and the cellular telephone service is not paid for by a governmental body, then, with the exception of the information we marked for release, the department must withhold the information it marked and the additional information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the individual at issue is not a currently-licensed or honorably retired peace officer, the department may not withhold the information at issue under section 552.117(a)(2) of the Government Code. Further, we find you failed to demonstrate the remaining responsive information at issue is subject to section 552.117(a)(2). Thus, no portion of the remaining responsive information may be withheld under section 552.117(a)(2).

If the individual at issue is not a currently-licensed or honorably retired peace officer, the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) of the Government Code 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 or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note, for purposes of section 552.117, "family member" means a spouse, minor child, or adult child who resides in the person's home. *See id.* § 552.117(c). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section

552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, then, with the exception of the information we marked for release, the department must withhold the information it marked and the additional information we marked under section 552.117(a)(1) of the Government Code. Conversely, if the employee at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the department may not withhold the information at issue under section 552.117(a)(1). Further, we find you failed to demonstrate the remaining responsive information at issue is subject to section 552.117(a)(1). Thus, no portion of the remaining responsive information may be withheld under section 552.117(a)(1).

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies in part to "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.] See *id.* §§ 552.1175(a)(1); see also 552.003(1-b.) (defining "honorably retired" for purposes of the Act). Some of the remaining information pertains to an individual subject to section 552.1175(a)(1). Thus, to the extent the information the department marked and the additional information we marked pertains to an individual who elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the department must withhold the marked information under section 552.1175 of the Government Code. Conversely, if the individual does not elect to restrict access to their information in accordance with 552.1175(b), the department may not withhold the information at issue under section 552.1175.

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. The Third 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.). This office has held common-law privacy protects the identity of the juvenile offender. See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.008(b). Upon review, we find portions of the information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, except for

the information we marked for release, the department must withhold the information it marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

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 it 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. We therefore conclude the department must withhold the employee identification numbers it marked under section 552.136 of the Government Code.

In summary, as the body worn camera recordings at issue were not properly requested our ruling does not reach this information and the department need not release it. The department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the individual at issue is a currently-licensed or honorably retired peace officer and the cellular telephone service is not paid for by a governmental body, then, with the exception of the information we marked for release, the department must withhold the information it marked and the additional information we marked under section 552.117(a)(2) of the Government Code. If the individual at issue is not a currently-licensed or honorably retired peace officer, and the individual timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, then, with the exception of the information we marked for release, the department must withhold the information it marked and the additional information we marked under section 552.117(a)(1) of the Government Code. To the extent the information the department marked and the additional information we marked pertains to an individual who elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the department must withhold the marked information under section 552.1175 of the Government Code. Except for the information we marked for release, the department must withhold the information it marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information it marked

under section 552.130 of the Government Code. The department must withhold the employee identification numbers it marked under section 552.136 of the Government Code. The department 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,

Chase D. Young  
Assistant Attorney General  
Open Records Division

CDY/jxd

Ref: ID# 920475

Enc. Submitted documents

c: Requestor  
(w/o enclosures)