



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 27, 2022

Mr. Trenton M. Dietz
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2022-02284

Dear Mr. Dietz:

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# 927866 (Reference No. 21-2313).

The City of Abilene (the "city") received a request for information pertaining to a specified motor vehicle accident involving the requestor's client. You state the submitted body worn camera recording was not properly requested pursuant to chapter 1701 of the Occupations Code. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information includes a police officer's 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 provides, in relevant part, the following:

(a) 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 recording at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. 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 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. We note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find the city has not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides “an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. “Personal information” means “information that identifies a person,” and includes a person’s photograph, social security number, date of birth, driver identification number, name, and address, but does not include the zip code, e-mail address, telephone number, and medical or disability information. Transp. Code § 730.003(6). DPS is an “agency” for purposes of chapter 730. *See* Transp. Code § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). You represent some of the remaining information consists of personal information that the city obtained from DPS. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of

personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.¹ However, none of the remaining information is confidential under section 730.004 or 730.013, and the city may not withhold it under section 552.101 on either of those grounds.

Section 552.101 of the Government Code also encompasses information made confidential by chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). The city states it is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. The city seeks to withhold telephone numbers and addresses within the remaining information. We conclude the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if it consists of the originating telephone number and address furnished by a 9-1-1 service supplier. To the extent the information at issue does not consist of the originating telephone number and address provided by a 9-1-1 service supplier, such information may not be withheld under section 552.101 in conjunction with section 772.318. Further, we find you have failed to demonstrate the applicability of section 772.318 to any portion of the remaining information. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code excepts 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). 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.). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation

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

to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history).

Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note, however, some of the remaining information relates to individuals who have been deidentified pursuant to section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. Therefore, those individuals' privacy interests are sufficiently protected. Thus, with the exception of the date of birth belonging to the requestor's client, the city must withhold the remaining dates of under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld 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. We note, because section 552.130 protects privacy interests, the requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. However, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "Notwithstanding 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."² Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). We note, because section 552.136 protects privacy interests, the requestor has a right of access to her client's information at issue pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the insurance policy number belonging to the requestor, the city must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, as the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if it consists of the originating telephone number and address

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 No. 481, 480 (1987), 470 (1987).

furnished by a 9-1-1 service supplier. With the exception of the date of birth belonging to the requestor, the city must withhold the remaining public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. With the exception of the insurance policy number belonging to the requestor, the city must withhold the insurance policy numbers in the remaining information under section 552.136 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,

Jahnna Ward
Assistant Attorney General
Open Records Division

JW/jxd

Ref: ID# 927866

Enc. Submitted documents

c: Requestor
(w/o enclosures)