



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2022

Ms. Debbie Brown
Legal Department
City of Sherman
P.O. Box 1106
Sherman, Texas 75091

OR2022-03057

Dear Ms. Brown:

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# 928196 (Ref. No. OR-5914/SPD# 847).

The Sherman Police Department (the "department") received a request for information pertaining to a specified traffic accident. The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims 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. Section 552.101 encompasses information made confidential by other statutes. The submitted information consists of footage from department 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 submitted body worn camera recordings. However, section 1701.661(h) provides, "[a] recording is confidential and excepted from the requirements of [the Act], if the recording: (1) was not required to be made under this subchapter or another law or under a policy adopted by the appropriate law enforcement agency; and (2) does not relate to a law enforcement purpose. *See id.* § 1701.661(h). We understand the department to assert the submitted body worn camera recordings do not relate to a law enforcement purpose. We note the recordings were made

by department officers during an investigation of a vehicle accident. Thus, upon review, we find the department has failed to demonstrate the applicability of section 1701.661(h) of the Occupations Code to the recordings at issue. Therefore, the submitted body worn camera recordings may not be withheld under section 552.101 of the Government Code on that basis.

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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). In addition, 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.). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must withhold all audible and visible public citizens' dates of birth and the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

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.¹ Gov't Code § 552.1175. Section 552.1175 applies to "a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003 of the Health and Safety Code[.]" *Id.* § 552.1175(a)(18). Some of the remaining information may pertain to an individual subject to section 552.1175(a)(18). Thus, to the extent the individual we indicated is a person listed under section 552.1175(a) of the Government Code and the individual elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we indicated under section 552.1175 of the Government Code.

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

¹ 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).

identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information we indicated 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.” 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. Open Records Decision No. 684 at 9 (2009). Accordingly, the department must withhold all audible and visible insurance policy numbers under section 552.136 of the Government Code.

In summary, the department must withhold audible and visible public citizens’ dates of birth and the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual we indicated is a person listed under section 552.1175(a) of the Government Code and the individual elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we indicated under section 552.1175 of the Government Code. The department must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code. The department must withhold audible and visible insurance policy numbers under section 552.136 of the Government Code. The department must release the remaining information.²

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

² We note the requestor has a right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). If the city receives another request for this information from an individual without such a right of access, we note section 552.1175(f) of the Government Code authorizes a governmental body to redact information under section 552.1175(b) of the Government Code, without the necessity of requesting a decision from this office, including the home addresses and telephone numbers, emergency contact information, social security number, date of birth, and family member information of certain individuals who properly elect to keep this information confidential. *See* Gov’t Code § 552.1175(b), (f). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.1175(h). *See id.* § 552.1175(g), (h).

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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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/ba

Ref: ID# 928196

Enc. Submitted documents

c: Requestor
(w/o enclosures)