



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 9, 2022

Mr. Samuel R. Jimison  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2022-03817

Dear Mr. Jimison:

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# 929549 (CCPD File No. APen3).

The Corpus Christi Police Department (the "department") received a request for a specified body worn camera recording. You claim 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 representative sample of information.<sup>1</sup>

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 consists of a law enforcement officer's body worn camera recording. 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 recording at issue. However, section 1701.661(f) provides, in relevant part, as follows:

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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 law enforcement agency may not release any portion of a recording made in a private space, or 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). The department states the submitted recording was made within a private space or pertains to the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. We note portions of the submitted recording were made in a private space. However, we are unable to determine whether the recording at issue involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, we must rule conditionally. We note there is no indication the department has received written authorizations for release from all of the subjects of the recording. If the submitted body worn camera recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the body worn camera recording is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, if the recording at issue does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, only the portions of the body worn camera recording we have indicated are confidential under section 1701.661(f) and the remainder of the recording may not be withheld under section 552.101 on that basis. In this instance, we will address other exceptions to disclosure.

Section 552.101 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. *See 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 portions of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold all audible and visible dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>2</sup> 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

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<sup>2</sup> 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).

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. Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the department must withhold all visible license plates and registration stickers under section 552.130 of the Government Code.

In summary, if the submitted body worn camera recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the body worn camera recording is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the recording at issue does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then the department must: (1) withhold the portions of the body worn camera recording we have indicated under section 552.101 of the Government Code in conjunction with 1701.661(f) of the Occupations Code; (2) withhold all audible and visible dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (3) withhold all visible license plates and registration stickers under section 552.130 of the Government Code; and (4) 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,

Colin Henry  
Attorney  
Open Records Division

CEH/ba

Ref: ID# 929549

c: Requestor