



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 23, 2022

Ms. Alicia K. Kreh
Counsel for the City of Benbrook
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2022-05509

Dear Ms. Kreh:

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# 931584.

The Benbrook Police Department (the "department"), which you represent, received a request for information pertaining to a named individual and a specified incident involving the requestor's client. You state the department is redacting social security numbers pursuant to section 552.147(b) of the Government Code and certain information pursuant to Open Records Decision No. 684 (2009).¹ You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information includes police 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:

¹ Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

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) for one of the submitted body worn camera recordings, which you indicated. As the body worn camera recording you indicated was not properly requested pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the department need not release it. 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). We note the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the remaining body worn camera recordings. Thus, we will consider your arguments against disclosure of the remaining body worn camera recordings at issue.

You state the department is redacting certain motor vehicle record information within the submitted documents pursuant to section 552.130(c) of the Government Code.² 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. You assert, and we agree, the remaining video recordings at issue contain audible and visible motor vehicle record information that is subject to section 552.130. You state the department lacks the technological capability to redact the information subject to section 552.130 from the video recordings at issue. Based upon this representation, we agree the department must withhold the remaining video recordings in their entirety under section 552.130 of the Government Code.³ *See* Open Records Decision No. 364 (1983).

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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which

² Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

³ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, 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 some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the information we have marked for release is highly intimate or embarrassing and not of legitimate public concern; thus, the department may not withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, as the body worn camera recording you indicated was not properly requested pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the department need not release it. The department must withhold the remaining video recordings in their entirety under section 552.130 of the Government Code. With the exception of the information we have marked for release, the department must withhold the information you marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information to this requestor.⁴

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.

⁴ We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) (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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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/mo

Ref: ID# 931584

Enc. Submitted documents

c: Requestor
(w/o enclosures)