



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 6, 2022

Ms. Dalia Flores  
Paralegal  
Office of the City Attorney  
72 West College Avenue  
San Angelo, Texas 76903

OR2022-10052

Dear Ms. Flores:

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# 940310 (City File Nos. P003439-011122, P003598-021722).

The San Angelo Police Department (the "department") received two requests from different requestors for information related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you state, and we agree, 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 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:

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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.

- (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 requestors do 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 they need not be released.<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.” Occ. Code § 1701.661(b).

Additionally, we must address the department’s obligations with respect to the first request for information under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether some of the requested information is excepted from public disclosure. *See Gov’t Code § 552.301*. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). In this instance, the department received the first request for information on January 11, 2022. We understand the department was closed on January 17, 2022. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body’s deadlines under the Act. You do not inform us the department was closed for any additional business days between January 11, 2022, and January 26, 2022. Thus, the department’s ten-business-day deadline under section 552.301(b) was January 26, 2022. However, the envelope in which the department provided the information required by section 552.301(b) was postmarked January 27, 2022. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the department failed to comply with the procedural requirements mandated by section 552.301(b) of the Government Code with respect to the information responsive to the first request.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You raise section 552.108 of the Government Code for the information at issue. However, we find you failed to establish a compelling reason to address your claim against disclosure with respect to the information responsive to the first request. In addition, we note the information you

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

submitted as responsive to the second request is also responsive to the first request. Because you have failed to establish a compelling reason to address your claim under section 552.108 for this information with respect to the first request, we do not address your argument under that section for the same information that is also responsive to the second request. Further, in failing to comply with the procedural requirements of section 552.301 in relation to the first request, you failed to comply with section 552.301 with respect to the same information responsive to the second request. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions to the information at issue.<sup>3</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. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). Accordingly, the department must withhold the dates of birth we marked under section 552.101 of the Government Code 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 we marked and the visible license plates in the remaining information under section 552.130 of the Government Code.

In summary, 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 they need not be released. The department must withhold the dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked and the visible license plates in the remaining information under section 552.130 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.

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<sup>3</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).

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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/jm

Ref: ID# 940310

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)