



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 13, 2022

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
315 South Santa Rosa, 6th Floor  
San Antonio, Texas 78207

OR2022-10819

Dear Mr. Kopp:

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# 940280 (ORR# W388867).

The San Antonio Police Department (the “department”) received a request for body worn camera video recordings related to report numbers SAPD2016978 and SAPD-2020-1099141. The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception the department claims and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup> We note the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov’t Code § 552.301(b), (e). Nonetheless, because the exception the department claims can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>2</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.

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. The submitted information consists of a video recording from the body worn video camera of a police officer of the department. 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:

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). Upon review, we find the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recording. However, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion of a recording made in a private space . . . 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). Upon review, we agree portions of the submitted body worn camera recording were made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). The department informs us it does not have permission for release from all of the subjects of the portions of the recordings made in the private spaces. *See id.* § 1701.661(f). Accordingly, the department must withhold the portions of the submitted recording that were made in a private space under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, no portion of the remaining body worn camera recording was made in a private space. Accordingly, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 1701.661 of the Occupations Code.

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. Upon review, we find some of the remaining information, which we noted, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must generally withhold the information we noted 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>3</sup> Section 552.130 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 generally withhold all visible license plates within the remaining information under section 552.130 of the Government Code.

Upon review, however, we note the requestor may be an individual whose information is generally protected by section 552.101 of the Government Code in conjunction with common-law privacy and by section 552.130 of the Government Code, which protects personal privacy. *See id.* § 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). Accordingly, if the requestor is such an individual, then the requestor has a right of access to her own private information pursuant to section 552.023 of the Government Code and any such information pertaining to the requestor may not be withheld from her under section 552.101 in conjunction with common-law privacy or under section 552.130.

In summary, the department must withhold the portions of the submitted recording that were made in a private space under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must generally withhold the information we noted under section 552.101 of the Government Code in conjunction with common-law privacy and must generally withhold all visible license plates within the remaining information under section 552.130 of the Government Code; however, if the requestor is an individual whose information is at issue, then the department may not withhold such information from this requestor on either of those bases. The department must release the remaining information.

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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 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,

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/jxd

Ref: ID# 940280

Enc. Submitted documents

c: Requestor  
(w/o enclosures)