



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 9, 2022

Ms. Mary E. Miller  
Assistant District Attorney  
Denton County Sheriff's Office  
127 North Woodrow Lane, Suite 300  
Denton, Texas 76205

OR2022-13112

Dear Ms. Miller:

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# 946567 (Ref. No. 6775).

The Denton County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified accident. You state the sheriff's office will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a body worn camera recording from a deputy of the sheriff's office. 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). In this instance, the requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recording pursuant to chapter 1701, our ruling does not reach this information and it need not be released.<sup>1</sup> However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (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).

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, 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 also 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. 600 (1992) (choice of insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). The 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.). However, the right to privacy is a personal right that lapses at death and the common-law right to privacy does not encompass information that relates only to a deceased individual. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also Justice v. Belo Broad. Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977))); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds.

Upon review, we conclude some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, to the extent a living individual has an interest in it, the sheriff’s office must withhold the information we indicated, and all living individuals’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the

---

<sup>1</sup> As we are able to make this determination, we need not address your arguments against the disclosure of this information.

remaining information is either not highly intimate or embarrassing to a living individual or is of legitimate public interest. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.1085 provides, in pertinent part:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.<sup>2</sup>

Gov't Code § 552.1085(c). For purposes of section 552.1085, "sensitive crime scene image" means "a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See id.* § 552.1085(a)(6). We understand some of the submitted photographs consist of sensitive crime scene images that were taken at a crime scene as part of a criminal case that is now closed. We note none of the exceptions in section 552.1085 apply in this instance. Upon review, we find the photographs we indicated consist of sensitive crime scene images for the purposes of section 552.1085. Therefore, the sheriff's office must withhold the photographs we indicated under section 552.1085(c) 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 identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. However, section 552.130 protects privacy, which is a personal right that lapses at death. *See Moore*, 589 S.W.2d at 491; Attorney General Opinions JM-229, H-917; ORD 272. Thus, section 552.130 is not applicable to the deceased individual's driver's license number or card. Upon review, we find the information we indicated consists of motor vehicle record information subject to section 552.130. Therefore, the sheriff's office must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the sheriff's office may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

In summary, as the requestor did not properly request the body worn camera recording pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. To the extent a living individual has an interest in it, the sheriff's office must withhold the information we indicated, and all living

---

<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).*

individuals' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the photographs we indicated under section 552.1085(c) of the Government Code. The sheriff's office must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code. The sheriff's office 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.

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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/jxd

Ref: ID# 946567

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Withholding Instructions

Withhold under 552.1085:

- DSCN0825
- DSCN0798

To the extent a living individual has an interest in the policy, withhold under 101/CLP:

- DSCN0807
- DSCN0808 (portion showing insurance card only)

Withhold all audible and/or visible:

- License plates and numbers
- Registration stickers or information
- VINs
- Driver's license and numbers (to the extent it belongs to a living individual)