



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 10, 2022

Lieutenant Luis Martinez
City of Laredo Police Department
4712 Maher Avenue
Laredo, Texas 78041

OR2022-13353

Dear Lt. Martinez:

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# 947673 (ORR# W022861-020322).

The Laredo Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor's client. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we must address the department's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the department received the request for information on February 3, 2022. We understand the department was closed on February 21, 2022, in observance of the Presidents' Day holiday. 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. Accordingly, the department's ten- and fifteen-business-day deadlines were February 17, 2022, and February 25, 2022, respectively. We note the envelope in which the department provided the information required by sections 552.301(b) and 552.301(e) is postmarked

March 1, 2022. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department failed to comply with the requirements of section 552.301 of the Government Code.

However, we note the submitted information includes a 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:

- (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 requisite information under section 1701.661(a) of the Occupations Code. Section 1701.662(a) of the Occupations Code provides as follows:

Notwithstanding [s]ection 552.301(b) of the Government Code, a governmental body's request for a decision from the attorney general about whether a requested body worn camera recording falls within an exception to public disclosure is considered timely if made not later than the *20th business day* after the date of the receipt of the written request.

Id. § 1701.662(a) (emphasis added). Accordingly, the 20-business-day deadline for the body worn camera recording was March 4, 2022. Thus, notwithstanding the department's failure to comply with section 552.301(b) and 552.301(e), we find the department timely requested a decision to withhold the submitted body worn camera recordings in accordance with section 1701.662(a). Accordingly, we will address your arguments against disclosure of the submitted body worn camera recordings.

However, with respect to the remaining information, 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 requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See Gov't Code* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). 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 sections

to the submitted information.¹ However, we find you have failed to establish a compelling reason to address your claim under section 552.108 of the Government Code for the remaining information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the submitted body worn camera recordings relate to a closed criminal case that did not result in conviction or deferred adjudication. Based on the department's representation and our review, we agree section 552.108(a)(2) is applicable to the submitted body worn camera recordings. Accordingly, the department may withhold the submitted body worn camera recordings under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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 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.). We note the requestor has a right of access to his client's confidential information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Accordingly, with the exception of the date of birth of the requestor's client, the department must withhold any audible dates of birth within the remaining video recordings and the dates of birth we have 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. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and it may not

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the information pertaining to the requestor's client, the department must withhold all visible license plates and registration stickers, as well as any discernible audible motor vehicle record information, within the remaining video recordings under section 552.130 of the Government Code.

In summary, the department may withhold the submitted body worn camera recording under section 552.108(a)(2) of the Government Code. With the exception of the date of birth of the requestor's client, the department must withhold any audible dates of birth within the remaining video recordings and the dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information pertaining to the requestor's client, the department must withhold all visible license plates and registration stickers, as well as any discernible audible motor vehicle record information, within the remaining video recordings under section 552.130 of the Government Code. The department must release the remaining information.²

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,

Joseph Hoggatt
Assistant Attorney General
Open Records Division

JWH/be

Ref: ID# 947673

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4 (1987). Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.