



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 16, 2022

Ms. Debbie Brown
Legal Department
City of Sherman
P.O. Box 1106
Sherman, Texas 75091

OR2022-13962

Dear Ms. Brown:

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# 947484 (OR-6213/SPD# 139).

The Sherman Police Department (the "department") received a request for all information related to a specified incident involving the requestor's client. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted audio and video recordings in response to the request for information. To the extent any information responsive to the remaining portions of the request existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See Gov't Code* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 information made confidential by other statutes. Some of the submitted information consists of footage from a department officer's body worn camera. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code states the information a requestor must provide when seeking a body worn camera recording. *See Occ. Code* § 1701.661(a). We

note the requestor provides the requisite information for the submitted body worn camera recording. However, section 1701.661(h) provides, “[a] recording is confidential and excepted from the requirements of [the Act], if the recording: (1) was not required to be made under this subchapter or another law or under a policy adopted by the appropriate law enforcement agency; and (2) does not relate to a law enforcement purpose. *See id.* § 1701.661(h). We understand the department to assert the submitted body worn camera recording does not relate to a law enforcement purpose. We note the recording was made by a department officer during an investigation of a vehicle accident. Thus, upon review, we find you have failed to demonstrate the applicability of section 1701.661(h) of the Occupations Code to the recording at issue. Therefore, the submitted body worn camera recording may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See Open Records Decision No. 649 (1996)*. You indicate the City of Sherman is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. However, the submitted information is not confidential under section 772.318 and the department may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also 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.). Thus, the department must withhold the audible public citizens’ dates of birth in the submitted information 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.¹ *See Gov’t Code § 552.130*. Accordingly, the department must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected,

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)*.

assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the department must withhold the audible and visible insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the department must withhold the audible public citizens’ dates of birth in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code. The department must withhold the audible and visible insurance policy numbers in the remaining information under section 552.136 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/jm

Ref: ID# 947484

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. *See* Gov’t Code § 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); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.