



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 16, 2022

Ms. Debbie Brown
Legal Department
City of Sherman
P.O. Box 1106
Sherman, Texas 75090

OR2022-14007

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# 947482 (Ref. No. OR-6212/SPD#145).

The Sherman Police Department (the "department") received a request for sixteen categories of information pertaining to a specified motor vehicle accident 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 the department has not submitted information responsive to all of the categories of information specified in the present request. To the extent any additional information responsive to the request existed on the date the department received the request, we assume the department has already 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. This section encompasses information made confidential by other statutes. The submitted information includes a recording from a department officer's body worn camera, which is 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.” *Id.* § 1701.661(h). You generally 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 motor vehicle accident. Thus, upon review, we find you have failed to demonstrate the applicability of section 1701.661(h) to the recording at issue, and the department may not withhold any portion of it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by 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 department is a part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. You state the information at issue includes originating telephone numbers and addresses furnished by a 9-1-1 service supplier. However, upon review, we find you have failed to demonstrate the applicability of section 772.318 to the information at issue. Therefore, the department may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety 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. This office has also 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. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transactions between individual and governmental body protected under common-law privacy). Further, 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.). However, we note the requestor has a right of access to information pertaining to his client and his client’s minor child that would otherwise be confidential under common-law privacy. *See* Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to records that contain information

relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the dates of birth pertaining to the requestor's client and the minor child of the requestor's client, the department must withhold all dates of birth within the submitted information and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.¹ See Gov't Code § 552.130. We note section 552.130 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to his client's motor vehicle record information, and it may not be withheld from him under section 552.130. See *id.* § 552.023; ORD 481 at 4. Accordingly, with the exception of the motor vehicle record information pertaining to the requestor's client, the department must withhold all audible and visible license plates, registration stickers, driver's license information, and vehicle identification numbers within the remaining recordings at issue and the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136(b) 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, assembled, or maintained by or for a government body is confidential." Gov't Code § 552.136(b); see *id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for purposes of this exception. See Open Records Decision No. 684 at 9 (2009). We note section 552.136 protects personal privacy. Thus, the requestor has a right of access to information pertaining to his client that would otherwise be confidential under section 552.136, and such information may not be withheld from him on that basis. See Gov't Code § 552.023; ORD 481 at 4. Accordingly, with the exception of the information pertaining to the requestor's client, the department must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

In summary, with the exception of the dates of birth pertaining to the requestor's client and the minor child of the requestor's client, the department must withhold all dates of birth within the submitted information and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the motor vehicle record information pertaining to the requestor's client, the department must withhold all audible and visible license plates, registration stickers, driver's license information, and vehicle identification numbers within the remaining recordings at issue and the motor vehicle record information we have marked under section 552.130 of the Government Code. With the exception of the information pertaining to the

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).

requestor's client, the department must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code. The department must release the remaining information to this requestor.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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jm

Ref: ID# 947482

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As noted above, the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.