



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 8, 2022

Mr. Robert G. Schleier, Jr.  
Counsel for the City of Kilgore  
Law Offices of Robert G. Schleier, Jr  
116 North Kilgore Street  
Kilgore, Texas 75662

OR2022-16470

Dear Mr. Schleier:

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# 952639.

The Kilgore Police Department (the "department"), which you represent, received a request for specified body worn camera recordings. 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.

Initially, we note some of the submitted information, which we indicated, is not responsive because it was not recorded on the specified date or at one of the specified locations. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.

Next, we note the responsive information consists of peace 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(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 provide the requisite information under section 1701.661(a) for some of the information at issue, which we indicated. As the body worn camera recording at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (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). We note the instant request includes the information required by section 1701.661(a) with respect to the remaining body worn camera recordings.

We must address the department’s obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov’t Code § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The department received the request for information on March 21, 2022. We note this office does not count the date the request was received, weekends, dates the office was closed, or holidays, including skeleton crew days observed by a governmental body, for purposes of calculating a governmental body’s deadlines under the Act. Thus, with respect to the body worn camera recordings at issue, we note the twenty-five-business-day deadline was April 25, 2022. *See* Occ. Code § 1701.662(c). However, the envelope in which the department provided a copy of the written request for information was postmarked May 24, 2022. *See* Gov’t Code § 552.308(a)(1) describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the department failed to comply with the requirements of section 1701.662 of the Occupations Code.

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 id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (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 responsive information.<sup>1</sup> However, we find you have failed to establish a compelling reason to address your claimed exception.

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. 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 his own birth date. *See* Gov’t Code § 552.023(a) (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 individuals request information concerning themselves).

Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold all public citizens’ dates of birth other than the requestor’s date of birth 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. *See* Gov’t Code § 552.130. Accordingly, the department must withhold all visible license plates, registration stickers, and driver’s licenses under section 552.130 of the Government Code.

In summary, as the body worn camera recording we indicated was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The department must withhold all public citizens’ dates of birth other than the requestor’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold all visible license plates, registration stickers, and driver’s licenses under section

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<sup>1</sup> 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).

552.130 of the Government Code. The department must release the remaining information.<sup>2</sup>

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# 952639

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> 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. 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.