



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2022

Ms. Ramona Chavez
Police Records Technician
City of Victoria
P.O. Box 2086
Victoria, Texas 78711-2548

OR2022-18381

Dear Ms. Chavez:

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# 956209.

The Victoria Police Department (the "department") received a request for information pertaining to a specified incident.¹ 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 the submitted information consists of recordings from body worn cameras of department police officers, which 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

¹ As you did not submit a copy of the requestor's written request for information, we take our description from your brief to this office.

(3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, as you have not submitted a copy of the request for information, we are not able to determine whether the requestor provided the requisite information under section 1701.661(a) for the body worn camera recordings at issue. Thus, we rule in the alternative. To the extent the requestor did not give the requisite information pursuant to section 1701.661(a) for the submitted body worn camera recordings, the requestor did not properly request such body worn camera recordings pursuant to chapter 1701 of the Occupations Code. In that instance, our ruling does not reach such information and the department need not release it.² 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). To the extent the requestor did provide the requisite information under section 1701.661(a) for the submitted body worn camera recordings, we will consider your argument against disclosure of the information at issue.

Next, we must address the department’s obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated 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. *See Gov’t Code* § 552.301(e). You state the department received the present request for information on April 1, 2022. As of the date of this letter, the department has not submitted for our review a copy of the written request for information. Consequently, we find the department has failed to comply with the requirements of section 552.301(e) of the Government Code.

Additionally, to the extent the requestor did provide the requisite information under section 1701.661(c), we note section 1701.662(c) of the Occupations Code provides:

Notwithstanding Section 552.301(e), Government Code, a governmental body’s submission to the attorney general of the information required by that subsection regarding a requested body worn camera recording is considered timely if made not later than the 25th business day after the date of receipt of the written request.

See Occ. Code § 1701.662(c). While section 1701.662(c) overrides the time deadline of section 552.301(e), it does not override the governmental body’s obligation to submit the requested information pursuant to section 552.301(e). As noted above, the department received the present request for information on April 1, 2022. However, as of the date of this letter, you have not submitted to this office a copy of the written request for

² In that instance, as we are able to make this determination, we need not address your argument against disclosure of this information.

information. *See* Gov't Code § 552.308(a)(1). Thus, to the extent the requestor did provide the requisite information under section 1701.661(a), we conclude the department also failed to comply with the time requirements of section 1701.662(c) of the Occupations Code and the submission requirements of section 552.301(e) of the Government 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). Upon review, we find you have failed to establish a compelling reason to address section 552.108 of the Government Code. However, 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 section to the information at issue.³

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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 confidential information pertaining to himself, his spouse, and his minor children 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”); 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, which we indicated, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information pertaining to the requestor, the requestor's spouse, and the requestor's minor children, the department must withhold all public citizens' dates of birth, including audible dates of birth, and the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

³ 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).

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. 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 own 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, the department must withhold all audible and visible license plates, registration stickers, and driver's license information within the remaining recordings at issue under section 552.130 of the Government Code.

In summary, to the extent the requestor did not give the requisite information pursuant to section 1701.661(a) of the Occupations Code for the submitted body worn camera recordings at issue, our ruling does not reach such information and the department need not release it. With the exception of the information pertaining to the requestor, the requestor's spouse, and the requestor's minor children, the department must withhold all public citizens' dates of birth, including audible dates of birth, and the information we indicated 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, the department must withhold all audible and visible license plates, registration stickers, and driver's license information within the remaining recordings at issue under section 552.130 of the Government Code. The department must release the remaining information to this requestor.⁴

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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jm

⁴ 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.

Ms. Ramona Chavez - Page 5

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Enc. Submitted documents

c: Requestor
(w/o enclosures)