



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2022

Ms. Jessica Trew
Administrative Assistant
Alvarado Police Department
600 South Parkway
Alvarado, Texas 76009

OR2022-20583

Dear Ms. Trew:

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# 959357.

The Alvarado Police Department (the "department") received a request for information related to a specified incident involving the requestor's client. You claim some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor excludes the CR-3 accident report from the scope of the request. Accordingly, this information is not responsive to the request for information. 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 that information in response to the request.

Next, we note you have redacted portions of the responsive information. We understand you have redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ However, we note you have also redacted a date of birth. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redact such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, you have been granted a previous determination to withhold the date of birth at issue without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), .302. Thus, in the future, the department should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

Next, we note some of the responsive information consists of 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 give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.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).

As noted above, we understand you have redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code. Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal

² As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to her client's motor vehicle record information. *See id.* § 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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In this instance, the requestor may have a right of access to some of the motor vehicle record information at issue under section 552.023 of the Government Code. However, because we are unable to determine whether the information at issue belongs to the requestor's client, we must rule conditionally. To the extent the motor vehicle record information you have redacted and the additional information we have marked belongs to the requestor's client, she has a right of access under section 552.023 to this information, and the department may not withhold such information under section 552.130 from the requestor. To the extent the motor vehicle record information you have redacted and the additional information we have marked does not belong to the requestor's client, the department must withhold this information under section 552.130 of the Government Code. In either instance, we find most of the remaining video recordings contains motor vehicle record information not belonging to the requestor's client. You state the department lacks the technological capability to redact the motor vehicle record information from the recordings. Accordingly, with the exception of the recording we have indicated for release, the department must withhold the remaining video recordings in their entireties under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). However, we find you have failed to demonstrate any portion of the remaining recording is subject to section 552.130 of the Government Code. Therefore, the department may not withhold the remaining video recording under section 552.130 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."³ Gov't Code § 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. *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 her client's date of birth and the date of birth belonging to her client's minor child under section 552.023 of the Government Code and this information may not be withheld from her under section 552.101 in conjunction with common-law privacy. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, with the exception of the dates of birth belonging to the requestor's client and her minor child, the department must withhold all public citizens' dates of birth in the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

In summary, as the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. To the extent the motor vehicle record information you have redacted and the additional information we have marked does not belong to the requestor's client, the department must withhold this information under section 552.130 of the Government Code. With the exception of the recording we have indicated for release, the department must withhold the remaining video recordings in their entireties under section 552.130 of the Government Code. With the exception of the dates of birth belonging to the requestor's client and her minor child, the department must withhold all public citizens' dates of birth in the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining responsive 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 959357

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ We note the requestor has a special right of access to some the information being released. *See* Gov't Code 552.023; ORD 481 at 4. Accordingly, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.