



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 25, 2022

Ms. Amanda Davis  
Counsel for the Town of Little Elm  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2022-21816

Dear Ms. Davis:

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# 961684 (Reference No. R00436).

The Town of Little Elm (the "town"), which you represent, received a request for certain video recordings pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the portion of the request seeking the home surveillance video. To the extent any information responsive to this portion of the request existed on the date the town received the request, we assume the town has released it. If the town 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).

Next, we note, and you acknowledge, the town did not comply with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301(e). 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 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 id.* In this instance, the town received the request after business hours on April 29, 2022. Therefore, for purposes of section 552.301, the town received the request for information on May 2, 2022. We note this office does not count the date the request was received for the purpose of calculating a governmental body's deadlines under the Act. We understand the town was closed on May 30, 2022, in observance of the Memorial Day holiday. This office does not count holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the town's fifteen-business-day deadline was May 23, 2022. We note the envelope in which the town provided the information required by section 552.301(e) is postmarked May 24, 2022. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the town has failed to comply with the requirements of section 552.301(e) of the Government Code.

However, we note the submitted information includes 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 provides, in relevant part, the following:

(a) 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). Upon review, we find the requestor provided the requisite information under section 1701.661(a) of the Occupations Code. Section 1701.662(a) of the Occupations Code provides as follows:

Notwithstanding [s]ection 552.301(b) of the Government Code, a governmental body's request for a decision from the attorney general about whether a requested body worn camera recording falls within an exception to public disclosure is considered timely if made not later than the *20th business day* after the date of the receipt of the written request.

*Id.* § 1701.662(a) (emphasis added). Accordingly, the 20-business-day deadline for the body worn camera recordings was May 31, 2022. Thus, notwithstanding the town's failure to comply with section 552.301(e), we find the town timely requested a decision to withhold

the submitted body worn camera recordings in accordance with section 1701.662(a). Accordingly, we will address your arguments against disclosure of the submitted body worn camera recordings.

However, with respect to the remaining information, 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* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (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 information at issue.<sup>1</sup> However, we find you have failed to establish a compelling reason to address your claim under section 552.108 of the Government Code for the remaining information at issue.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted body worn camera recordings relate to a pending criminal investigation. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude section 552.108(a)(1) is applicable to the information at issue, and the town may withhold the submitted body worn camera recordings under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from public 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. *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

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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).

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 date of birth, and this information may not be withheld from him under common-law privacy. *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); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Accordingly, with the exception of the requestor's date of birth, the town must withhold all audible public citizens' dates of birth within the remaining information 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. We note, because section 552.130 protects privacy interests, the requestor has a right of access to his motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b); ORD 481 at 4. However, because we are unable to determine whether the information at issue belongs to the requestor, we must rule conditionally. To the extent the motor vehicle record information at issue does not belong to the requestor, the town must withhold all audible and visible license plates, driver's license information, and motor vehicle registration information within the remaining information under section 552.130 of the Government Code. To the extent the motor vehicle record information at issue belongs to the requestor, the town must release it under section 552.023 of the Government Code.

In summary, the town may withhold the submitted body worn camera recordings under section 552.108(a)(1) of the Government Code. With the exception of the requestor's date of birth, the town must withhold all audible public citizens' dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the motor vehicle record information at issue does not belong to the requestor, the town must withhold all audible and visible license plates, driver's license information, and motor vehicle registration information within the remaining information under section 552.130 of the Government Code. The town must release the remaining information to this requestor.<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.

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<sup>2</sup> We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See Gov't Code* § 552.023(a); *see also* ORD 481 at 4. Accordingly, if the town receives another request for this same information from a different requestor, the town must again seek a ruling from this office.

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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/be

Ref: ID# 961684

Enc. Submitted documents

c: Requestor  
(w/o enclosures)