



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2022

Ms. Michelle Rollins
Legal Department-114
City of Sherman
220 West Mulberry Street
Sherman, Texas 75090

OR2022-23064

Dear Ms. Rollins:

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# 963608 (OR-6352/SPD# 353).

The City of Sherman (the "city") received a request for call reports, body worn camera video recordings, and 9-1-1 audio recordings related to a specified incident. You state you have released some information to the requestor.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

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 recordings from city officers' body worn cameras, which are 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 understand the requestor

¹ As you have not submitted a copy of the request for information, we take our description from your brief.

² We note you did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352. We note 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 (1987), 480 (1987), 470 (1987).

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 recordings do not relate to a law enforcement purpose. We note the recordings were made by city peace officers 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 recordings at issue, and the city may not withhold any portion of them 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). We understand the city is a part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. We understand you to claim 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 city 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 herself that would otherwise be confidential 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 individual requests information

concerning themselves). 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 requestor's date of birth, the city must withhold all public citizens' dates of birth within the submitted information and the information we have indicated 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 section 552.130 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to her 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 information belonging to the requestor, the city must withhold all visible license plates, visible driver's licenses, and audible license plate numbers under section 552.130 of the Government Code.

In summary, the city must: (1) withhold all public citizens' dates of birth, with the exception of the requestor's date of birth, and the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold all visible license plates, visible driver's licenses, and audible license plate numbers, with the exception of the information belonging to the requestor, under section 552.130 of the Government Code; and (3) release the remaining information to this requestor.³

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/jm

³ As noted above, 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); ORD 481 at 4. Accordingly, if the city receives another request for this same information from a different requestor, we note the city may redact the motor vehicle record information being released pursuant to section 552.130(c) of the Government Code and the requestor's date of birth pursuant to the previous determination issued in Open Records Letter No. 2021-10465 (2021).

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Enc. Submitted documents

c: Requestor
(w/o enclosures)