



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 9, 2022

Mr. Jason C. Miller
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2022-23693

Dear Mr. Miller:

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# 964882 (Reference No. 2022-2171).

The City of Mesquite (the "city") received a request for all information relating to report number 22029424.¹ You state the city will release some information to the requestor with redactions allowed by law. You state the city will redact certain dates of birth pursuant to the previous determination issued in Open Records Letter No. 2015-24970 (2015).² You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

¹ You state the city sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You also inform us the city received the required payment on May 18, 2022. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

² Open Records Letter No. 2015-24970 is a previous determination issued to the city authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

Initially, we note, and you acknowledge, the submitted information consists of a peace officer's body worn camera recording. 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. This section encompasses information made confidential by other statutes. 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 note the requestor provides the requisite information for the body worn camera recording at issue. However, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion of a recording made in a private space . . . without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

Id. § 1701.661(f). Upon review, we find portions of submitted body worn camera recording were made in a private space. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). You state the city has not received written authorization for release from the subject of the recording made in the private space. *See id.* § 1701.661(f). Accordingly, the city must withhold the portions of the body worn camera recording you indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). We note the requestor has a right of access to her client's personal information, and this information may not be withheld from her 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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find portions of the remaining information meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the

information pertaining to the requestor's client, the city must withhold the visible automobile insurance cards and the information you indicated under section 552.101 of the Government Code in conjunction with common-law privacy.³

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 her client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b); ORD 481 at 4. Accordingly, with the exception of the information pertaining to the requestor's client, the city must withhold the information you indicated under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). We note the requestor has a right of access to her client's account information pursuant to section 552.023 of the Government Code, and it may not be withheld from this requestor under section 552.136. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the information pertaining to the requestor's client, the city must withhold the information you indicated under section 552.136 of the Government Code.

In summary, the city must withhold the portions of the body worn camera recording you indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. With the exception of the information pertaining to the requestor's client, the city must withhold (1) the visible automobile insurance cards and the information you indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information you indicated under section 552.130 of the Government Code; and (3) the information you indicated under section 552.136 of the Government Code. The city must release the remaining portions of the recording 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.

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

⁴ 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 city receives another request for this same information from a different requestor, the city 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/jxd

Ref: ID# 964882

Enc. Submitted documents

c: Requestor
(w/o enclosures)