



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 17, 2022

Mr. Alvaro Sanchez-Cifuentes  
Counsel for the City of Burkburnett  
Guevara Law, P.C.  
201 South Lakeline Boulevard, Suite 704  
Cedar Park, Texas 78613

OR2022-24565

Dear Mr. Sanchez-Cifuentes:

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# 966814.

The City of Burkburnett (the "city"), which you represent, received a request for information pertaining to a specified incident involving the requestor's client.<sup>1</sup> We understand the city has released most of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information consists of a police officer's body worn camera recording. 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:

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<sup>1</sup> As the city has not submitted a copy of the request for information, we take our description from its brief.

<sup>2</sup> We note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(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 the applicability of these exceptions to the submitted information. *See id.* §§ 552.007, .302, .352.

- (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, we are not able to determine whether the requestor provided the requisite information under section 1701.661(a). Thus, we rule in the alternative. To the extent the requestor did not provide the requisite information under section 1701.661(a), the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701 of the Occupations Code. In that instance, our ruling does not reach the submitted information and the city need not release it.<sup>3</sup> 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), we will consider your arguments against disclosure of 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. 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. 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* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the information at issue may pertain to the requestor’s client. The requestor has a right of access to her client’s confidential information 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). We are unable to determine whether the information at issue pertains to the requestor’s client; therefore, we must rule conditionally. To the extent the information at issue does not pertain to the requestor’s

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<sup>3</sup> In this instance, as we are able to make this determination, we need not address your arguments against disclosure of this information.

client, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, to the extent the information at issue pertains to the requestor's client, the city may not withhold the information at issue under section 552.101 in conjunction with common-law privacy. Further, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.<sup>4</sup> Gov't Code § 552.1175. Section 552.1175 applies, in part, to "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *See id.* § 552.1175(a)(1); *see also id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See Open Records Decision No. 506 at 5-7 (1988)* (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Thus, to the extent the information we have indicated pertains to an individual who is subject to section 552.1175(a) of the Government Code and who elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the city must withhold the cellular telephone number we have indicated under section 552.1175 of the Government Code as long as the cellular telephone service is not paid for by a governmental body. Conversely, if the individual is not subject to section 552.1175(a) of the Government Code or does not elect to restrict access to this information in accordance with section 552.1175(b), then the city may not withhold the information at issue under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code § 552.130.* We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her client's motor vehicle record information. *See id.* § 552.023(a); ORD 481 at 4. 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 any of the motor vehicle record information at issue pertains to the requestor's client, she has a right of access under section 552.023 to this information, and the city may not withhold such information under section 552.130 from the requestor. To the extent the motor vehicle record information at issue does not pertain to the requestor's client, the city must withhold all audible and visible license plate numbers, license plate states of issuance, driver's licenses, driver's license numbers, driver's license

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<sup>4</sup> 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).*

states of issuance, registration stickers, and motor vehicle registration information under section 552.130 of the Government Code.

In summary, to the extent the requestor did not provide the requisite information under section 1701.661(a) of the Occupations Code for the body worn camera recording at issue, our ruling does not reach the submitted information and the city need not release it. To the extent the requestor did provide the requisite information under section 1701.661(a) of the Occupations Code for the submitted body worn camera recording at issue, the city must: (1) withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy to the extent the information at issue does not pertain to the requestor's client; (2) to the extent the information we have indicated pertains to an individual who is subject to section 552.1175(a) of the Government Code and who elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, withhold the cellular telephone number we have indicated under section 552.1175 of the Government Code as long as the cellular telephone service is not paid for by a governmental body; (3) withhold all audible and visible license plate numbers, license plate states of issuance, driver's licenses, driver's license numbers, driver's license states of issuance, registration stickers, and motor vehicle registration information under section 552.130 of the Government Code to the extent the motor vehicle record information at issue does not pertain to the requestor's client; and (4) release the remaining information.

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,

Alexandra C. Burks  
Assistant Attorney General  
Open Records Division

ACB/mo

Ref: ID# 966814

Enc. Submitted documents

c: Requestor  
(w/o enclosures)