



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2022

Mr. Samuel R. Jimison
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2022-24758

Dear Mr. Jimison:

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# 966339 (CCPD File Number RF011).

The Corpus Christi Police Department (the "department") received a request for the body worn camera recordings pertaining to a particular incident.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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 consists of law enforcement officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code states the information

¹ You state the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

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 recordings at issue. However, section 1701.661(f) provides, in relevant part, as follows:

A law enforcement agency may not release any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, 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). The department states the submitted recordings were made within a private space or pertains to the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. We note portions of the submitted recordings were made in a private space. However, we are unable to determine whether the recordings at issue involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, we must rule conditionally. We note there is no indication the department has received written authorizations for release from all of the subjects of the recording. If the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the body worn camera recordings are confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, if the recordings at issue do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, only the portions of the body worn camera recordings we have indicated are confidential under section 1701.661(f) and the remainder of the recording may not be withheld under section 552.101 on that basis. In this instance, we will address other exceptions to disclosure.

Section 552.101 of the Government Code 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*.

Accordingly, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.² 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. Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the department must withhold all visible license plates and registration stickers under section 552.130 of the Government Code.

In summary, if the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the body worn camera recordings are confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the recordings at issue do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then the department must: (1) withhold the portions of the body worn camera recordings we have indicated under section 552.101 of the Government Code in conjunction with 1701.661(f) of the Occupations Code; (2) withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (3) withhold all visible license plates and registration stickers under section 552.130 of the Government Code; and (4) release the remaining information.

Finally, you ask this office to issue a previous determination that would permit the department to withhold all body-worn camera recordings recorded in a private space or which depict conduct punishable exclusively by fine under section 1701.661(f) of the Occupations Code without requesting a ruling from this office. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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

² 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).

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jm

Ref: ID# 966339

Enc. Submitted documents

c: Requestor
(w/o enclosures)