



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 23, 2022

Mr. Nico Arias  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102 – 6311

OR2022-25460

Dear Mr. Arias:

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# 967235 (Ref. No. P007721-060122).

The City of Fort Worth (the “city”) received a request for body worn camera recordings, dash camera recordings, photographs, 9-1-1 calls and incident reports pertaining to a specified incident involving the requestor’s client. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state the city has notified the deceased individual’s family of the request for information and of the right to submit comments to this office as to why the submitted information should not be released. *See* Gov’t Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

Initially, we note the city has submitted only body worn camera recordings and photographs. To the extent any additional information responsive to the request existed on the date the city received the present request, we assume the city has already released it. If the city has not released any such information, it must do so at this time. *See id.* §§ 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 some of the submitted information consists of police 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, as follows:

(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). In this instance, we are unable to determine whether the requestor provided the requisite information under section 1701.661(a). Thus, we must rule conditionally. To the extent the requestor did not give the requisite information under section 1701.661(a), the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code. In that instance, our ruling does not reach this information and it need not be released.<sup>1</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 this 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 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must

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<sup>1</sup> As we are able to make this determination, we need not address the submitted argument against disclosure.

concern the “most intimate aspects of human affairs.” *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). We note the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). However, the United States Supreme Court has determined that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004).

As previously noted, you state the city has notified the surviving family members of the deceased individual of the request for information and of the right to assert a privacy interest in the information at issue. As of the date of this letter, we have not received any correspondence from a family member of the deceased individual. Thus, we have no basis for determining the family’s privacy interest in the information at issue. Therefore, the city may not withhold any of the information at issue under section 552.101 of the Government Code on the basis of constitutional 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.<sup>2</sup> *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 his client’s 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 motor vehicle record information pertaining to the requestor’s client, the city must withhold all audible and visible license plates, license plate numbers and states of issuance, registration stickers, vehicle identification numbers, driver’s licenses, and driver’s license information within the submitted information under section 552.130 of the Government Code.

In summary, to the extent the requestor did not give the requisite information under section 1701.661(a) of the Occupations Code, then the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information, and it need not be released to the requestor. With the exception of the motor vehicle record information pertaining to the requestor’s client, the city must withhold all audible and visible license plates, license plate numbers and states of issuance, registration stickers, vehicle identification numbers, driver’s licenses, and driver’s license information within the submitted information under section 552.130 of the Government Code. The city must release the remaining information.

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<sup>2</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).

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,

Chase D. Young  
Assistant Attorney General  
Open Records Division

CDY/jxd

Ref: ID# 967235

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)