



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 13, 2022

Ms. Charla Thomas  
Deputy City Attorney  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2022-27990

Dear Ms. Thomas:

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# 971960 (ORR#s 22-1792 & 22-1846).

The Temple Police Department (the "department") received two requests from different requestors for information pertaining to a specified incident. You indicate you released some information. You claim some of the submitted information was not properly requested by the second requestor pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.1085 of the Government Code.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information. Additionally, you state you notified the deceased individual's next of kin of the request for information and of the right to submit arguments to this office as to why this information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information includes 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, the following:

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<sup>1</sup> Although you raise section 552.101 of the Government Code in conjunction with section 552.1085 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision No. 676 at 1-2 (2002)

(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, the requestors do not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released.<sup>2</sup> However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (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).

Section 552.101 of the Government Code exempts 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 encompasses section 411.192 of the Government Code, which governs the release of all information maintained by the department concerning the licensure of individuals to carry a concealed handgun, and provides as follows:

(a) The [Texas Department of Public Safety (“DPS”)] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual’s name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

*Id.* 411.192(a), (b). Some of the remaining information includes concealed handgun license information of a deceased individual. We note the right of privacy is generally purely personal and lapses at death. *See Moore v. Charles B. Pierce Film Enters, Inc.*, 589 S.W.2d

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<sup>2</sup> As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.) (right of privacy is purely personal and lapses upon death); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-67 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). However, it is not clear to this office that the sole purpose of section 411.192 is to protect the personal privacy interests of license holders. Furthermore, under the plain language of section 411.192(a), “all other records maintained under this subchapter” are made confidential, regardless of whether the person named in the record is living or dead. *See Gov’t Code* § 411.192(a) (emphasis added). Nothing in the statutory text indicates a legislative intent that confidentiality attach only to records of living license holders. Accordingly, we conclude the submitted concealed handgun license information, which we marked, is confidential under section 411.192 of the Government Code, and must be withheld under section 552.101 of the Government Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI DPS maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. We note, however, active warrant information or other information relating to an individual’s current involvement in the criminal justice system does not constitute criminal history information for purposes of section 552.101. *See id.* § 411.081(b). We also note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find a portion of the remaining information, which we marked, consists of CHRI that is confidential under section 411.083. Thus, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, we find the department has not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government

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<sup>3</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Code, and the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides, in part:

(a) A communication between certified emergency medical services [“EMS”] personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

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(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). Upon review, we find section 773.091 is applicable to Exhibit G. Thus, with the exception of the information subject to section 773.091(g), which is not confidential and must be released, the department must withhold Exhibit G under section 552.101 of the Government Code in conjunction with section 773.091(b) 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. We note the first requestor has a right of access to her client’s confidential information pursuant to section 552.023 of the Government Code and that information may not be withheld from that requestor under section 552.101 on the basis of common-law privacy. *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”); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself). This office has

found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *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), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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.). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Because “the right of privacy is purely personal[,]” that right “terminates upon the death of the person whose privacy is invaded[.]” *See Moore*, 589 S.W.2d at 491; *see also Justice*, 472 F. Supp. at 147; Attorney General Opinions JM-229, H-917; ORD 272. Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. Upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, to the extent a living individual has an interest in the financial information we marked, with the exception of the confidential information belonging to the first requestor's clients', the department must withhold all living public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, if living individual does not have an interest in the financial information we marked, the department may not withhold it under section 552.101 on the basis of common law privacy.

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 concern the “most intimate aspects of human affairs.” *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). 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*, 589 S.W.2d at 491; ORD 272. 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).

Because the information at issue relates to a deceased individual, the department may not withhold any of the information at issue based on the deceased individual's privacy interests. Further, as of this date, we have not received correspondence from any member of the deceased individual's family asserting a privacy interest in the information. Thus, we have no basis for determining a family member has a privacy interest in the information at issue. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code on the basis of constitutional privacy and the holding in *Favish*.

Section 552.1085 of the Government Code provides, in relevant part:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). For purposes of section 552.1085, "sensitive crime scene image" means "a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See id.* § 552.1085(a)(6). Upon review, we find none of the submitted photographs consist of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the department may not withhold the submitted photographs under section 552.1085(c) 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.<sup>4</sup> *See id.* § 552.130. Because section 552.130 protects personal privacy, the first 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(a); ORD 481 at 4. We note section 552.130 protects personal privacy. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore* 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229 (1984); H-917. Thus, with the exception of the motor vehicle record information belonging to the first requestor's clients', the department must withhold the motor vehicle record information we marked and all visible license plates and vehicle registration stickers under section 552.130 of the Government Code.

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<sup>4</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, 480 (1987), 470 (1987).

Section 552.136(b) 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 concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 (2009). We note the purpose of section 552.136 is to protect privacy. Thus, the first requestor has a right of access to her client’s policy number pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Further, as previously discussed, because the right of privacy lapses at death, access device numbers that pertain solely to a deceased individual may not be withheld under section 552.136. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272. Accordingly, to the extent a living individual has an interest in the insurance policy numbers at issue, with the exception of the first requestor’s client’s insurance policy number, which must be released to that requestor, the department must withhold the insurance policy numbers we marked under section 552.136 of the Government Code.

In summary, the submitted body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code and they need not be released. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code. With the exception of the information subject to section 773.091(g) of the Government Code, which must be released, the department must withhold Exhibit G under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. To the extent a living individual has an interest in the financial information we marked, with the exception of the confidential information belonging to the first requestor’s clients, the department must withhold all living public citizens’ dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the motor vehicle record information belonging to the first requestor’s client’s, the department must withhold the motor vehicle record information we marked and all visible license plates and vehicle registration stickers under section 552.130 of the Government Code. To the extent a living individual has an interest in the insurance policy numbers at issue, with the exception of the first requestor’s client’s insurance policy number, which must be released to that requestor, the department must withhold the insurance policy numbers we marked under section 552.136 of the Government Code. The department must release the remaining information.<sup>5</sup>

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

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<sup>5</sup> We note the first requestor has a right of access to some of the information being released. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

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,

Pearlie Gault  
Assistant Attorney General  
Open Records Division

PG/mo

Ref: ID# 971960

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)