



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 26, 2022

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

OR2022-29761

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# 971296 (PIR No. E003641-062122).

The City of Fort Worth (the "city") received a request for information pertaining to a specified motor vehicle accident involving the requestor's client. You state the city will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> 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. We note the submitted information contains a recording from a city police officer's body worn cameras, which is subject to chapter 1701 of the Occupations Code. 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:

---

<sup>1</sup> We note in a letter dated September 1, 2022, we asked the city to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). As of the date of this letter, this office has not received a response to our correspondence.

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). You assert portions of the body worn camera recording at issue was made in a private space and, thus, is confidential in its entirety under section 1701.661(f). Upon review, we agree portions of the body worn camera recording at issue, which we have indicated, 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 portions of the recording made in the private space. *See id.* § 1701.661(f). Accordingly, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.<sup>2</sup> However, upon review, we find no portion of the remainder of the body worn camera recording at issue was made in a private space. *See id.* Therefore, the city may not withhold any portion of the remaining information 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 constitutional right to privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S.589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fadlo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir.1985); ORD 455 at 6-7. 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 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). The remaining information contains photographs of a deceased individual. In this instance, you have informed us the city was unable to notify the deceased individual's next of kin of the right to assert an interest in withholding the information at issue. *See id.* Absent a representation from the decedent's family, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy.

---

<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 also 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 transactions between individual and governmental body protected under common-law privacy). Further, 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.). As noted above, the right to privacy is a personal right that lapses at death, and the common-law right to privacy does not encompass information that relates only to a deceased individual. *Moore*, 589 S.W.2d at 491; see also *Justice v. Belo Broad. Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 6521 (1977))); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); ORD 272 at 1. Thus, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. We also note the requestor has a right of access to information pertaining to her client that would otherwise be confidential under common-law privacy. See Gov't Code § 552.023 (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 individual requests information concerning himself).

Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have indicated and, with the exception of the date of birth of the requestor's client, the dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law 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>3</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 her client's motor vehicle record information, and it may not be withheld from her 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, registration stickers, driver's licenses, and driver's license numbers and states of issuance within the remaining information under section 552.130 of the Government Code.

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 government body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). We note section 552.136 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to her client's insurance policy number, and it may not be withheld from her under section 552.136. *See id.* § 552.023; ORD 481 at 4. Accordingly, with the exception of the insurance number pertaining to the requestor's client, the city must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). We note the requestor has a right of access to her client's e-mail address under section 552.137(b). *Id.* § 552.137(b). Accordingly, with the exception of the e-mail address belonging to the requestor's client, the city must withhold the personal e-mail addresses within the remaining information under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the city must withhold the information we have 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 information we have indicated and the dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy; (2) all audible and visible license plates, license plate numbers, registration stickers, driver's licenses, and driver's license numbers and states of issuance within the remaining information under section 552.130 of the Government Code; (3) the insurance policy numbers within the remaining information under section 552.136 of the Government Code; and (4) the personal e-mail addresses within the remaining information under section 552.137 of the Government Code, unless

---

<sup>3</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).

the owners affirmatively consent to their public disclosure. The city must release the remaining information to this requestor.<sup>4</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 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/mo

Ref: ID# 971296

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>4</sup> As noted above, the requestor has a special right of access to some of the information being released in this instance. See Gov't Code §§ 552.023(a), .137(b); ORD 481 at 4. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.