



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 28, 2022

Ms. Alexis Clifford
Paralegal
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2022-30038

Dear Ms. Clifford:

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# 976254 (Ref. No. TCon3).

The Corpus Christi Police Department (the "department") received a request for all information pertaining to a specified incident. We understand the department has destroyed some of the requested information pursuant to the department's records retention schedule.¹ The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the department claims some of the submitted information is not responsive to the instant request. However, we note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Upon review, we find all of the submitted information is responsive to the request. We will therefore address the claimed exceptions to disclosure of the entirety 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. This section encompasses information made confidential by other statutes. The submitted information includes a recording from an officer's body worn

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

camera. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code provides the procedures a requestor must follow 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:

A law enforcement agency may not release any portion . . . 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 video recording at issue consists of a body worn camera recording involving an investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. Upon review, we note the requestor's client is one of the subjects of the recording. Thus, we find the requestor's client has consented to release of the recording to the requestor for purposes of subsection (f), and the department may not withhold the entirety of the recording under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, portions of the recording involve another subject, and we understand the department has not received written authorization for release from the remaining subject. Accordingly, the department must withhold the portions of the submitted body worn camera recording that involve the remaining subject of the recording 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 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). 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 remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

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.² See Gov't Code § 552.130. We note section 552.130 protects personal privacy. Thus, the 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) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Accordingly, with the exception of the motor vehicle record information pertaining to the requestor's client, the department must withhold all visible license plates, license plate numbers, license plate states of issuance, driver's licenses, driver's license numbers, driver's license states of issuance, and registration stickers within the remainder of the recording at issue under section 552.130 of the Government Code.

Section 552.136 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 determined insurance policy numbers are access device numbers for purposes of section 552.136. See Open Records Decision No. 684 at 9 (2009). Accordingly, the department must withhold the insurance policy number we have indicated under section 552.136 of the Government Code.

In summary, the department must withhold the portions of the submitted body worn camera recording that involve the remaining subject of the recording under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the motor vehicle record information pertaining to the requestor's client, the department must withhold all visible license plates, license plate numbers, license plate states of issuance, driver's licenses, driver's license numbers, driver's license states of issuance, and registration stickers within the remainder of the recording at issue under section 552.130 of the Government Code. The department must withhold the insurance policy number we have indicated under section 552.136 of the Government Code. The department must release the remaining information.³

Finally, the department asks 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

² 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).

³ We note the 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.

which depict conduct punishable exclusively by fine under section 1701.661(f) of the Occupations Code without requesting a ruling from this office. *See* Gov't Code § 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 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/pt

Ref: ID# 976254

Enc. Submitted documents

c: Requestor
(w/o enclosures)