



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 7, 2022

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

OR2022-30936

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# 976589 (CCPD File No. VDel4).

The Corpus Christi Police Department (the "department") received a request for body worn camera recordings related to a specified incident. 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 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). You state 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. Upon review, we find none of the recordings at issue were made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). Additionally, we are unable to determine whether the recordings at issue involve an investigation of conduct that constitutes a misdemeanor punishable by fine only that did not result in arrest. Therefore, we must rule conditionally. To the extent the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only that did not result in arrest, you state the department has not received written authorizations for release from all of the subjects of the recordings. Accordingly, in that instance, the department must withhold the submitted body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. Conversely, to the extent the submitted body worn camera recordings do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only that did not result in arrest, we will consider whether the information at issue is excepted from disclosure under the Act.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). We note the requestor has a right of access to her own private information pursuant to section 552.023 of the Government Code and this information may not be withheld from her under common-law privacy. *See* Gov’t Code § 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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the department must withhold the date of birth not belonging to the requestor 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.<sup>1</sup> *See* Gov’t Code § 552.130. Upon review, we find the department must withhold all visible license plates, driver’s licenses, and driver’s license numbers under section 552.130 of the Government Code.

In summary, to the extent the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only that did not result in arrest, the department must withhold the submitted body worn camera recordings under section 552.101 of the Government Code in conjunction with section

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<sup>1</sup> 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, 480 (1987), 470 (1987).

1701.661(f) of the Occupations Code. To the extent the submitted body worn camera recordings do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only that did not result in arrest, the department must: (1) withhold the date of birth not belonging to the requestor under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold all visible license plates, driver's licenses, and driver's license numbers under section 552.130 of the Government Code; and (3) release the remaining information to this requestor.<sup>2</sup>

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 and which does not result in an arrest 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 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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/pt

Ref: ID# 976589

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> We note 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); ORD 481 at 4. Thus, if the department receives another request for this information from an individual without such a right of access, we note Open Records Letter No. 2016-00831 (2016) is a previous determination issued to the department authorizing it to withhold certain public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.