



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 11, 2022

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

OR2022-31152

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# 976546 (CCPD File No. JCed1).

The Corpus Christi Police Department (the "department") received a request for information pertaining 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.

Initially, we note you have only submitted a body worn camera recording. Although you state you submitted a representative sample of information, the submitted information is not representative of all the types of information requested. Please be advised, this open records letter ruling applies only to the type of information the department submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the type of information the department submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information is presumed to be public). Accordingly, to the extent the department maintained information responsive to the remaining portions of the request that is substantially different from the type of information submitted to this office on the date the department received the request, we assume you have released it. If you have not released any such information, you 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).

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. 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. Occ. Code § 1701.661(a). We determine the requestor provided the requisite information required by section 1701.661(a) of the Occupations Code. However, section 1701.661(f) provides:

A law enforcement agency may not release any portion 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 video recording at issue was made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). The department further states it does not have written authorization for release of the recordings from all of the subjects of the recording. *See id.* § 1701.661(f). Upon review, we find portions of the body worn camera recording at issue was made in a private space. Accordingly, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, we find you have failed to demonstrate the remaining portions of the body worn camera recording at issue was made in a private space for the purposes of section 1701.661(f). *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). Additionally, we note you argue the recording at issue involves an investigation of deadly conduct, which is a class A misdemeanor punishable by confinement in jail. *See* Penal Code §§ 12.21(2), 22.05(a), (e). Thus, we find you have failed to demonstrate the recording at issue involves the investigation of conduct that constitutes a misdemeanor punishable by fine only. Therefore, the department may not withhold the remaining portions of the body worn camera 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. 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Because “the right of privacy is purely personal[,]” that right “terminates upon the death of the person whose privacy is invaded[.]” *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.); *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)); 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.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). 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.). Thus, the department must withhold all visible living public citizens' dates of birth 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. We note the purpose of section 552.130 is to protect 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; H-917; ORD 272. Thus, section 552.130 is not applicable to the motor vehicle record information of the deceased individuals. Accordingly, with the exception of the motor vehicle record information pertaining solely to a deceased individual, the department must withhold all audible and visible license plates, license plate numbers, driver's licenses, and vehicle registration stickers under section 552.130 of the Government Code.

In summary, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must withhold all visible living public citizens' dates of birth 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 a deceased individual, the department must withhold all audible and visible license plates, license plate numbers, driver's licenses, and vehicle registration stickers under section 552.130 of the Government Code. The department must release the remaining information.

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 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->

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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 (1987), 480 (1987), 470 (1987).

[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# 976546

Enc. Submitted documents

c: Requestor  
(w/o enclosures)