



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 11, 2022

Ms. Aliceson Cotton  
Counsel for the City of Wylie  
Abernathy Roeder Boyd & Hullett, P.C.  
1700 Redbud Boulevard, Suite 300  
McKinney, Texas 75069

OR2022-31219

Dear Ms. Cotton:

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# 977429.

The Wylie Police Department (the "department"), which you represent, received two requests from different requestors for information related to a specified incident. You claim some of the submitted information was not properly requested pursuant to section 1701.661(a) of the Occupations Code. You further claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the first requestor only seeks video recordings related to the specified incident. Accordingly, the remaining information is not responsive to the first request for information. This ruling does not address the public availability of any information that is not responsive to the first request and the department is not required to release non-responsive information in response to the first request.

Next, we note the responsive 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:

(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, we find neither requestor provides 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>1</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 552.130 of the Government Code exempts from public disclosure 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. *See* Gov’t Code § 552.130. Upon review, we find some of the remaining video recordings contains motor vehicle record information. You state the department lacks the technological capability to redact the motor vehicle record information from the recordings. Accordingly, with the exception of the video recordings we have indicated for release, the department must withhold the remaining video recordings in their entirety and the information we have marked under section 552.130 of the Government Code.<sup>2</sup> *See* Open Records Decision No. 364 (1983). However, we find you have failed to demonstrate any portion of the remaining information, including the video recordings we have marked for release, is subject to section 552.130 of the Government Code. Therefore, the department may not withhold the remaining information under section 552.130 of the Government Code.

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. This section 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 Third 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 second requestor has a right of access to his own date of birth under section 552.023 of the Government Code and this information may not be withheld from him under section 552.101 in conjunction with 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

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<sup>1</sup> As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

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

Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the date of birth belonging to the second requestor, the department must withhold all public citizens' dates of birth in the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, 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. With the exception of the video recordings we have indicated for release, the department must withhold the remaining video recordings in their entireties and the information we have marked under section 552.130 of the Government Code. With the exception of the date of birth belonging to the second requestor, the department must withhold all public citizens' dates of birth in the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining responsive information.<sup>3</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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/pt

Ref: ID# 977429

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

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<sup>3</sup> We note the second requestor has a special right of access to some the information being released to him. See Gov't Code 552.023; ORD 481 at 4. Accordingly, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.