



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 19, 2022

Mr. Jeffrey L. Moore  
Counsel for the City of Roanoke  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2022-32146

Dear Mr. Moore:

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# 979148 (PIR# P000581-080822).

The Roanoke Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident involving the requestor. You state you released some information. 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 contains recordings from city police officers' body worn cameras. 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:

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). You state the submitted recordings pertain to the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. You also state you have not received a written authorization for release from all of the subjects of the recordings. *See id.* However, upon review, we find the submitted recordings depict the arrest of the requestor. Thus, we find the department has failed to demonstrate the submitted recordings involves the investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, the department may not withhold the submitted recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) on that basis.

Section 552.101 of the Government Code excepts 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 doctrine of the common-law 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. *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.). We note the requestor has a right of access to his own date of birth as well as his spouse's date of birth to the extent he is acting as her authorized representative. Accordingly, if the requestor is acting as his spouse's authorized representative, then with the exception of the dates of birth pertaining to the requestor and his spouse, the department must withhold all audible and written public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, if the requestor is not acting as his spouse's authorized representative, then with the exception of the date of birth pertaining to the requestor, the department must withhold all audible and written 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 excepts 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.<sup>1</sup> *See Gov't Code* § 552.130. We note section 552.130 protects personal privacy. Thus, the requestor may have a right of access to his spouse's motor vehicle record information if he is acting as her spouse's authorized representative under section 552.023 of the Government and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, to the extent the requestor is not acting as his spouse's authorized representative, the department must withhold the motor vehicle record information you marked, the additional motor vehicle record information we marked, and all audible and visible driver's license numbers, license plates, driver's licenses, issuing state and vehicle registration stickers under section 552.130 of the Government Code.

---

<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).

In summary, if the requestor is acting as his spouse's authorized representative, then with the exception of the dates of birth pertaining to the requestor and his spouse, the department must withhold all audible and written public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor is not acting as his spouse's authorized representative, the department must withhold the motor vehicle record information you marked, the additional motor vehicle record information we marked, and all audible and visible driver's license numbers, license plates, driver's licenses, issuing state and vehicle registration stickers under section 552.130 of the Government Code. The department must release the remaining information.<sup>2</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,

Pearlie Gault  
Assistant Attorney General  
Open Records Division

PG/jxd

Ref: ID# 979148

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup> 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.