



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 19, 2022

Ms. Shawnta A. Adams  
Assistant City Attorney  
Arlington Police Department  
Mail Stop 04-0200  
Post Office Box 1065  
Arlington, Texas 76004-1065

OR2022-32167

Dear Ms. Adams:

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# 979153 (Ref. No. R138140).

The Arlington Police Department (the "department") received a request for information pertaining to a specified investigation.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the submitted information includes a recording from a body worn camera of a department police officer, which is 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(a) provides:

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:

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<sup>1</sup> As you have not submitted a copy of the request for information for our review, we take our description from your brief to our office.

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

- (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, as you have not submitted a copy of the request for information, we are not able to determine whether the requestor provided the requisite information under section 1701.661(a) for the body worn camera recording at issue. Thus, we rule in the alternative. To the extent the requestor did not give the requisite information pursuant to section 1701.661(a) for the submitted body worn camera recording, the requestor did not properly request such body worn camera recordings pursuant to chapter 1701 of the Occupations Code. In that instance, our ruling does not reach such information and the department need not release it.<sup>3</sup> However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (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). To the extent the requestor did provide the requisite information under section 1701.661(a) for the submitted body worn camera recording, we will consider your argument against disclosure of the information at issue.

Next, we must address the department’s obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov’t Code* § 552.301(e). You state the department received the present request for information on July 28, 2022. As of the date of this letter, the department has not submitted for our review a copy of the written request for information. Consequently, we find the department has failed to comply with the requirements of section 552.301(e) of the Government Code.

Additionally, to the extent the requestor did provide the requisite information under section 1701.661(c), we note section 1701.662(c) of the Occupations Code provides:

Notwithstanding Section 552.301(e), Government Code, a governmental body’s submission to the attorney general of the information required by that subsection regarding a requested body worn camera recording is considered timely if made not later than the 25th business day after the date of receipt of the written request.

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<sup>3</sup> In that instance, as we are able to make this determination, we need not address your argument against disclosure of this information.

*See* Occ. Code § 1701.662(c). While section 1701.662(c) overrides the time deadline of section 552.301(e), it does not override the governmental body’s obligation to submit the requested information pursuant to section 552.301(e). As noted above, the department received the present request for information on July 28, 2022. However, as of the date of this letter, you have not submitted to this office a copy of the written request for information. *See* Gov’t Code § 552.308(a)(1). Thus, to the extent the requestor did provide the requisite information under section 1701.661(a), we conclude the department also failed to comply with the time requirements of section 1701.662(c) of the Occupations Code and the submission requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Upon review, we find you have failed to establish a compelling reason to address section 552.108 of the Government Code. However, because sections 552.101, 552.130, and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these section to the information at issue.<sup>4</sup>

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 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.). Accordingly, the department must withhold the public citizens’ date of births in the remaining information 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 or 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. Accordingly, we find the department must withhold the information we marked and the visible license plates within the remaining information 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.” *Id.* § 552.136(b);

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<sup>4</sup> 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).

*see id.* § 552.136(a) (defining “access device”). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Accordingly, the department must withhold the information we marked under section 552.136 of the Government Code.

In summary, to the extent the requestor did not give the requisite information pursuant to section 1701.661(a) of the Occupations Code for the submitted body worn camera recording at issue, our ruling does not reach such information and the department need not release it. The department must withhold the public citizens’ date of births in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked and the visible license plates within the remaining information under section 552.130 of the Government Code. The department must withhold the information we marked under section 552.136 of the Government Code. The department must release the remaining information.

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,

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMH/jxd

Ref: ID# 979153

Enc. Submitted documents

c: Requestor  
(w/o enclosures)