



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 25, 2022

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

OR2022-33009

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# 979956 (DJoh11).

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified motor vehicle collision involving the requestor's client, including all reports, witness statements, photographs, and audio and video recordings. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted two body worn camera recordings pertaining to the motor vehicle collision specified in the present request. Additionally, you do not inform us the department has released any information to the requestor. Although you state the department has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information the department has submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the type of information you 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

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<sup>1</sup> We note, and you acknowledge, the department did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

§ 552.301, information at issue is presumed to be public). Accordingly, to the extent any additional information responsive to the present request existed on the date the department received the request, we assume the department has released it to the requestor. If the department has not released any such information, it 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. This section encompasses information made confidential by other statutes. As noted above, the submitted information consists of recordings from police officers’ body worn cameras, which 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 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 generally assert the information at issue “constitutes . . . recording[s] made within a private space and/or . . . involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and [did] not result in arrest[.]” Upon review, we find no portion of the body worn camera recordings at issue was made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). Further, we note the information at issue pertains to an investigation of Driving While Intoxicated, which is a Class B misdemeanor that includes confinement as a punishment. *See* Penal Code § 49.04(b). 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 any portion of the submitted information 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. *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.). However, we note the requestor has a right of access to information pertaining to his client that would otherwise be confidential under common-law privacy. *See* Gov’t Code § 552.023 (person

or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, with the exception of the date of birth pertaining to the requestor's client, the department must withhold all dates of birth of public citizens within the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts 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.<sup>2</sup> See Gov't Code § 552.130. We note section 552.130 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to his client's motor vehicle record information and it may not be withheld from him under section 552.130. See *id.* § 552.023; ORD 481 at 4. Accordingly, with the exception of the motor vehicle record information pertaining to the requestor's client, the department must withhold all audible and visible license plates, registration stickers, and driver's license information within the remaining information under section 552.130 of the Government Code.

In summary, with the exception of the date of birth pertaining to the requestor's client, the department must withhold all dates of birth of public citizens within the submitted information 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 the requestor's client, the department must withhold all audible and visible license plates, registration stickers, and driver's license information within the remaining information under section 552.130 of the Government Code. The department must release the remaining information to this requestor.<sup>3</sup>

Finally, you also ask this office to issue a "previous determination" permitting the department to withhold body worn camera recordings made within a private space, or involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and that does not result in arrest when the department is without written authorization from all subjects of the recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code without seeking 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 ruling at this time. Accordingly, this letter ruling is limited to the particular information at issue in this request and limited to the facts

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<sup>2</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).

<sup>3</sup> As noted above, 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. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/pt

Ref: ID# 979956

Enc. Submitted documents

c: Requestor  
(w/o enclosures)