



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 31, 2022

Ms. Heather Marie Trevino  
Office Specialist  
City of Edinburg  
1702 South Closner Boulevard  
Edinburg, Texas 78539

OR2022-33598

Dear Ms. Trevino:

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# 981511 (ORR# P001051-082222).

The Edinburg Police Department (the "department") received a request for the body worn camera recording pertaining to a specified incident involving the requestor. You claim the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code.<sup>1</sup> We have considered the submitted argument and reviewed the submitted information.

Initially, we note the submitted information consists of a body worn camera recording. 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(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:

(1) the date and approximate time of the recording;

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<sup>1</sup> Although you cite to section 552.101, you make no arguments in support of this assertion, nor have you marked any information as being excepted under this section. Therefore, we assume you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302.

- (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). We note the requestor provided the requisite information under section 1701.661(a) for the body worn camera recording at issue. As the body worn camera recording was properly requested pursuant to chapter 1701 of the Occupations Code, we will address whether the information at issue is excepted from disclosure under the Act.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>2</sup> Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note the requestor has a right of access to her and her minor children’s confidential information pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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). 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.). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Accordingly, with the exception of the confidential information belonging to the requestor and her minor children, the department must withhold all audible public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. Section 552.1175 applies, in part, to “current or honorably retired peace officers as defined by Article 2.12, Code of Criminal

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<sup>2</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).

Procedure[.]” *See id.* § 552.1175(a)(1); *see also id.* § 552.003(1-b) (defining “honorably retired” for purposes of the Act). We note, for purposes of section 552.1175, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *Cf. id.* § 552.117(c) (providing that “family member” has meaning assigned by Fin. Code § 31.006(d)). We also note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.1175 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, to the extent the information we indicated pertains to individuals who are subject to section 552.1175(a) of the Government Code and who elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we indicated under section 552.1175 of the Government Code; however, the cellular telephone number at issue may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individuals whose information is at issue are not subject to section 552.1175(a) or does not elect to restrict access to their information in accordance with section 552.1175(b), then the information at issue may not be withheld under section 552.1175 of the Government Code.

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. *See* Gov’t Code § 552.130. Because section 552.130 protects personal privacy, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, with the exception of the motor vehicle record information belonging to the requestor, the department must withhold all visible license plates and vehicle registration stickers as well as any discernible audible motor vehicle record information within the remaining information under section 552.130 of the Government Code.

In summary, with the exception of the confidential information belonging to the requestor and her minor children, the department must withhold all audible public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have indicated pertains to individuals who are subject to section 552.1175(a) of the Government Code and who elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we have indicated under section 552.1175 of the Government Code; however, the cellular telephone number at issue may be withheld only if a governmental body does not pay for the cellular telephone service. With the exception of the motor vehicle record information belonging to the requestor, the department must withhold all visible license plates and vehicle registration stickers as well as any discernible audible motor vehicle record information within the remaining information under section

552.130 of the Government Code. The department must release the remaining 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,

Pearlie Gault  
Assistant Attorney General  
Open Records Division

PG/pt

Ref: ID# 981511

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</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.