



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 14, 2022

Mr. Ryan Brooke  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2022-35360

Dear Mr. Brooke:

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# 984910 (Ref. No. P002127).

The City of Lubbock (the "city") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</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. We note the submitted information includes police officer's 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> 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 that those records contain substantially different types of information than that submitted to this office.

(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, the requestor provided the requisite information under section 1701.661(a) for the body worn camera recording 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 . . . 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). Upon review, we find portions of the body worn camera recording were made in a private space. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). The city does not indicate it has received written authorization for release from the subject of the portion of the recording made in a private space. *See id.* § 1701.661(f). Accordingly, the city must withhold the information we indicated 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 information protected by the federal Driver's Privacy Protection Act of 1994 (the "DPPA"), section 2721 of title 18 of the United States Code. Section 2721 provides, in part:

(a) In general — A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section[.]

...

(b) Permissible uses.—Personal information referred to in subsection (a) . . . may be disclosed as follows:

(1) For use by any government agency . . . in carrying out its functions[.]

...

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for

uses under subsection (b)(11) or (12)). . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a)(1), (b)(1), (c). The DPPA defines “motor vehicle record,” in relevant part, as “any record that pertains to a motor vehicle operator’s permit . . . issued by a department of motor vehicles[.]” *Id.* § 2725(1). Section 2725 also defines personal information as “information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.” *See id.* § 2725(3).

The city asserts the information at issue contains personal information obtained from the Texas Department of Public Safety (“DPS”) that is protected under the DPPA. We note this office has concluded that the DPPA applies to information in the possession of DPS. Attorney General Opinion JC-0499 at 1 (2002). The city explains it obtained the personal information for use in carrying out its functions with regard to law enforcement. Based upon the city’s representations and our review, we find the city, in obtaining personal information from DPS to assist the city in carrying out its law enforcement functions, is an authorized recipient of personal information for purposes of section 2721(c). *See* 18 U.S.C. § 2721(b)(1) (providing that personal information may be disclosed by a state department of motor vehicles to any entity acting on behalf of a Federal, State, or local agency in carrying out its functions). Therefore, we find some of the information at issue is personal information obtained from DPS by an authorized recipient and is confidential under section 2721 of title 18 of the United States Code. Accordingly, as we have no indication release of this information would be for a use permitted under section 2721(b), the city must withhold the name, address, but not the zip code, of the individuals whose information was received from DPS under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. However, you have failed to demonstrate any portion of the remaining information at issue is subject to section 2721(a), and the city may not withhold any portion of the remaining information at issue under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator’s accident report), .062 (officer’s accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and

(c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c). The remaining information contains a CR-3 accident report that is subject to chapter 550 of the Transportation Code. The requestor is not a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b), and the city must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the city to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the requestor has a right of access to the redacted accident report. Therefore, the city must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code.

Section 552.101 of the Government Code also 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. 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See Open Records Decision No. 600* (1992) (personal financial information includes choice of particular insurance carrier). This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455* (1987). Upon review, we conclude some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the public citizens' dates of birth and the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Thus, the city must withhold all visible license plates and registration stickers in the video recordings as well as the information we marked 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); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See Open Records Decision No. 684* at 9 (2009). Accordingly, the city must withhold the insurance policy numbers we marked under section 552.136 of the Government Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147(a). Upon review, we find you have failed to demonstrate section 552.147 is applicable to any of the remaining information. Therefore, the city may not withhold any portion of the remaining information under section 552.147 of the Government Code.

In summary, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The city must withhold the name, address, but not the zip code, of the individuals whose information was received from DPS under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. The city must withhold the submitted accident report under section 552.101 of the Government Code in conjunction with section 550.056(b) of the Transportation Code, but must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code. The city must withhold the public citizens’ dates of birth and the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold all visible license plates and registration stickers in the video recordings as well as the information we marked under section 552.130 of the Government Code. The city 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,

Sarah E. Reese  
Attorney  
Open Records Division

SER/pt

Ref: ID# 984910

Enc. Submitted documents

c: Requestor  
(w/o enclosures)