



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2022

Ms. Sally Ortiz
Senior Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2022-38070

Dear Ms. Ortiz:

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# 986551 (ORR# P024382-091422).

The Plano Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor. We understand you have 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 representative sample of information.¹

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 information at issue consists of police officers' body worn camera recordings. 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. We note, however, section 1701.661(f) provides, in relevant part:

¹ 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.

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). We understand the department has not received written authorization for release from all of the subjects of the video. Although you assert section 1701.661(f), you do not explain whether the submitted recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, we must rule conditionally. If the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, they are confidential, and the department must withhold them in their entireties under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, if the submitted body worn camera recordings do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, they may not be withheld under section 552.101 in conjunction with section 1701.661(f) of the Occupations Code. In this instance, we will address whether any portion of the submitted body worn camera recordings must otherwise be withheld pursuant to the Act.

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.). Thus, the department must withhold the public citizen's date of birth not belonging to the requestor or his minor child under section 552.101 of the Government Code in conjunction with common-law privacy. 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 herself).

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.² See Gov't Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own motor

² 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).

vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the department must withhold the audible and visible driver's license numbers not belonging to the requestor in the remaining information under section 552.130 of the Government Code.

In summary, if the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the department must withhold them in their entirety under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the submitted body worn camera recordings do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the department must: (1) withhold the public citizen's date of birth not belonging to the requestor or his minor child under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the audible and visible driver's license numbers not belonging to the requestor in the remaining information under section 552.130 of the Government Code; and (3) release the remaining information.³

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,

Colin Henry
Assistant Attorney General
Open Records Division

CEH/pt

Ref: ID# 986551

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ In this instance, 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.