



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 9, 2022

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

OR2022-38210

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# 988281 (Reference No. R140466).

The Arlington Police Department (the "department") received a request for information pertaining to a specified incident. You state you will release some information to the requestor. 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 information.

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. The submitted information contains body worn camera recordings. 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 as follows:

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;
- (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 recordings at issue. Section 1701.661(f) of the Occupations Code provides, in relevant part, as follows:

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.

Occ. Code § 1701.661(f). The department states the submitted video recordings at issue were made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). The department further states it does not have written authorization for release of the recordings from all of the subjects of the recordings. *See id.* § 1701.661(f). Upon review, we find portions of the body worn camera recordings at issue were made in a private space. Accordingly, the department 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. However, the remainder of the recordings at issue were not made in a private space for purposes of section 1701.661(f). Therefore, the department failed to demonstrate the remaining information at issue is confidential under section 1701.661(f) of the Occupations Code, and the department may not withhold it under section 552.101 of the Government Code on that basis.

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 doctrine of the common-law 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. *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.). Thus, the department must withhold the information we indicated 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 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.¹ *See Gov't Code* § 552.130. Therefore, the department must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

¹ 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).

In summary, the department 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 department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we indicated under section 552.130 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/pt

Ref: ID# 988281

Enc. Submitted documents

c: Requestor
(w/o enclosures)