



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 20, 2022

Ms. Alexis Clifford  
Paralegal  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 98469-9277

OR2022-39732

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# 991012 (File No. NCam4 and NCam5).

The Corpus Christi Police Department (the "department") received two requests from the same requestor for information pertaining to a specified incident involving the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.138 of the Government Code. We have considered the exceptions 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 a video recording from the body worn video camera of a department police officer. 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;
- (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). Upon review, we find the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recording. 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). Upon review, we agree portions of the submitted 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 department states it does not have written authorization for release of the recording from all of the subjects of the recording. *See id.* § 1701.661(f). Accordingly, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, we find no portion of the remaining information at issue was made in a private space for the purposes of section 1701.661(f). Further, we find the recordings depict the arrest of an individual. Thus, we find you have failed to demonstrate the remaining information at issue involves the investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

The department claims section 552.138 of the Government Code for the remaining information. Section 552.138 provides in relevant part:

(a) In this section:

- (1) “Family violence shelter center” has the meaning assigned by Section 51.002, Human Resources Code.
- (2) “Sexual assault program” has the meaning assigned by Section 420.003.
- (3) “Victims of trafficking shelter center” means:
  - (A) a program that:
    - (i) is operated by a public or private nonprofit organization; and

(ii) provides comprehensive residential and nonresidential services to persons who are victims of trafficking under Section 20A.02, Penal Code; or

(B) a child-placing agency, as defined by Section 42.002, Human Resources Code, that provides services to persons who are victims of trafficking under Section 20A.02, Penal Code.

(b) Information maintained by a family violence shelter center, victims of trafficking shelter center, or sexual assault program is excepted from [required public disclosure] if it is information that relates to:

...

(3) the name, home address, home telephone number, or numeric identifier of a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;

(4) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program[.]

Gov't Code § 552.138(a), (b)(3)-(4). Section 552.138 applies only to information maintained by a family violence shelter center, victims of trafficking shelter center, or sexual assault program. *See id.* § 552.138. Therefore, because the information at issue is maintained by the department, and not by a family violence shelter center, victims of trafficking shelter center, or sexual assault program, the department may not withhold any of the remaining information at issue under section 552.138 of the Government 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. 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 Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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.). Upon review, we find some of the remaining information, which we have indicated, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the public citizen's date of birth not belonging to the requestor and the information we have indicated 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.<sup>1</sup> 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 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 all visible license plate images and license plate numbers not belonging to the requestor in the remaining information 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." Gov't Code § 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 department must withhold the insurance policy number within the remaining information under section 552.136 of the Government Code.

In summary, the department must withhold the information we have 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 public citizen's date of birth not belonging to the requestor and the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold all visible license plate images and license plate numbers not belonging to the requestor in the remaining information under section 552.130 of the Government Code. The department must withhold the insurance policy number within the remaining information under section 552.136 of the Government Code. The department must release the remaining information.<sup>2</sup>

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<sup>1</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).

<sup>2</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.

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 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/jxd

Ref: ID# 991012

Enc. Submitted documents

c: Requestor  
(w/o enclosures)