



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2016

Ms. Lacie Hale
City Secretary
City of West Lake Hills
911 Westlake Drive
West Lake Hills, Texas 78746-4509

OR2016-18630

Dear Ms. Hale:

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# 622977.

The West Lake Hills Police Department (the "department") received a request for five categories of information related to a specific motor vehicle accident. You state you will release audio and video recordings that do not contain confidential information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the department has only submitted information related to body camera video recordings, dash camera video recordings and radio dispatch calls. The department has not submitted information responsive to the other categories of requested information. We assume, to the extent any information responsive to the other categories of requested information existed on the date the department received the request, the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

We note the submitted information includes 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;
- (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 does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator’s license or driver’s license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov’t Code § 552.130(a)(1)-(2). Upon review, we find the submitted dash camera video recordings contain both audible and visually discernible motor vehicle record information subject to section 552.130. We note the audio portions of the dash camera video recordings are intertwined with the video portions of these recordings. You state the department does not have the technological ability to redact information from the video recordings. Accordingly, we find the department must withhold the submitted dash camera video recordings in their entireties under section 552.130 of the Government Code.

The submitted audio recordings also contain information subject to section 552.130. You also state the department does not possess the technological capability to redact information from audio recordings. However, because the department had the ability to copy the submitted audio recordings in order to submit them for our review, we believe the department has the capability to produce a copy of only the non-confidential portions of the audio recordings. Accordingly, the department must withhold the motor vehicle record information within the audio recordings, which we have indicated, under section 552.130 of the Government Code.

You assert the submitted audio recordings contain dates of birth which are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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. In considering whether a public citizen’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure.¹ *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens’ dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. However, upon review, we find the submitted audio recordings do not contain any dates of birth of public citizens. Thus, the department may not withhold any portion of the remaining information on this basis.

In summary, as the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701 Of the Occupations Code, our ruling does not reach this information and it need not be released. The department must withhold the submitted dash camera video recordings in their entireties under section 552.130 of the Government Code. The department must also withhold the portions of the audio recordings we have 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

¹Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'KM' with a long horizontal flourish extending to the right.

Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/dls

Ref: ID# 622977

Enc. Submitted documents

c: Requestor
(w/o enclosures)