



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2016

Ms. T. Trisha Dang
Assistant City Attorney
City of Sugar Land
2700 Town Center Boulevard North
Sugar Land, Texas 77479

OR2016-17597

Dear Ms. Dang:

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# 619445.

The City of Sugar Land (the "city") received a request for information pertaining to a specified car accident. You state the city has released some information. You claim some of 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.

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. We note the submitted information consists of a recording from a body worn camera. 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). In this instance, the requestor provides the requisite information. You indicate the submitted recording was required to be made by law or the policies of the city's police department and the recording relates to a law enforcement purpose. *See id.* § 1701.661(h). Further, you indicate the recording is or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Additionally, we have no indication the recording documents an incident that involves the use of deadly force by

an officer or relates to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). The submitted recording demonstrates it was not made in a private space for the purposes of section 1701.661(f). *See id.* §§ 1701.661(f), .651(3) (defining “private space” for purposes of section 1701.661(f)). We note, however, section 1701.661(f) provides, in relevant part:

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). Upon review, we are unable to determine whether the submitted recording involves 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 recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, we note there is no indication the city has received written authorizations for release from the subjects of the recording. Accordingly, the submitted recording is confidential and must be withheld under section 552.101 in conjunction with section 1701.661(f). However, if the submitted recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, no portion of the recording is confidential under section 1701.661(f) and it may not be withheld under section 552.101 on that basis. In that instance, we will address your arguments against disclosure of the submitted recording.

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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public

concern. Therefore, the city may not withhold the remaining information under section 552.101 of the Government Code on that basis.

Section 552.130 of the Government Code 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). We note, however, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to her client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a) (person or 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 is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, with the exception of the information pertaining to the requestor's client, the city must withhold the images of license plates and the information we have indicated under section 552.130. However, none of the remaining information consists of motor vehicle record information for the purposes of section 552.130 and it may not be withheld on that basis.

In summary, if the submitted recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the city must withhold the submitted recording under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the submitted recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the city must (1) withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold all images of license plates and the additional motor vehicle record information we have indicated under section 552.130 of the Government Code, with the exception of the motor vehicle information of the requestor's client; and (3) release the remaining information.¹

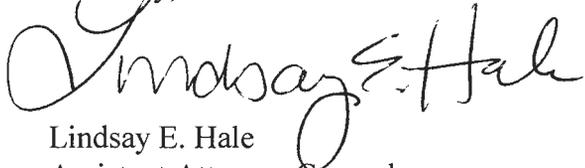
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

¹We note the requestor has a right of access beyond that of the general public to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4.

[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 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 that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 619445

Enc. Submitted documents

c: Requestor
(w/o enclosures)