



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 7, 2016

Ms. Julie P. Doshier  
Counsel for the Lancaster Police Department  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
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Dallas, Texas 75201

OR2016-20132

Dear Ms. Doshier:

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# 625719 (ORR# 77637).

The Lancaster Police Department (the "department"), which you represent, received a request for information pertaining to a specified accident. The department states it does not have some of the requested information.<sup>1</sup> The department also states it will withhold information pursuant to section 552.147(b) of the Government Code.<sup>2</sup> The department informs us it has released some of the requested information, including the submitted accident report. *See* Transp. Code § 550.065(c-1). The department claims some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

<sup>2</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code 552.147(b).

Initially, we note the submitted information includes a police officer's 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 the following:

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). 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 the department is not required to release it.<sup>3</sup> 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 552.101 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 section 411.192 of the Government Code, which provides, in relevant part, as follows:

(a) [The Texas Department of Public Safety ("DPS")] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

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<sup>3</sup>As our ruling is dispositive, we do not address the arguments of the department to withhold this information.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

*Id.* § 411.192(a)-(b). We have marked concealed handgun license information that the department obtained from DPS. We note the requestor represents the license holder. Therefore, with the exception of the requestor's name, date of birth, gender, race, and zip code, which the department must release pursuant to section 411.192(b) of the Government Code, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192(a) of the Government Code.

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides "an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. "Personal information" includes a person's name, address, and driver identification number, but not the zip code. *Id.* § 730.003(6). DPS is an "agency" for purposes of chapter 730. *See id.* § 730.003(1) ("agency" is state agency that compiles or maintains motor vehicle records). The department states some of the submitted information consists of personal information that was obtained by the department from DPS. *See id.* § 730.007(a)(2)(A)(I) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information, and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, we find the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.<sup>4</sup> However, the department may not withhold any of the remaining information under section 552.101 on that basis.

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 the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). 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

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<sup>4</sup>As our ruling is dispositive, we do not address the other argument of the department to withhold this information.

legitimate concern. *Indus. Found.*, 540 S.W.2d 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.<sup>5</sup> *Tex. 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. Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Because some of the individuals whose information is at issue have been de-identified, the privacy interests of these individuals are sufficiently protected, and the department may not withhold information pertaining to them under common-law privacy. The remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

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. *See* Gov't Code § 552.130. Because section 552.130 protects personal privacy, the requestor has a right of access to motor vehicle record information of the requestor's clients pursuant to section 552.023 of the Government Code. *See id.* § 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). Nevertheless, the submitted dash-cam video recording and audio recordings of 9-1-1 calls contain motor vehicle record information to which the requestor does not have a right of access pursuant to section 552.023. The department states it lacks the technical capability to redact the information subject to section 552.130 from the video recording. Based on this representation, we agree the department must withhold the submitted video recording in its entirety under section 552.130. The department also asserts it lacks the technical capability to redact the information at issue from the audio recording. However, because the department had the ability to copy the submitted audio recording in order to submit the requested information for our review, we

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<sup>5</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

believe the department has the capacity to produce a copy of only the non-confidential portions of it. Thus, the department must withhold the motor vehicle record information we have indicated in the audio recordings under section 552.130 of the Government Code. The department must also withhold the motor vehicle record information we have marked in the submitted police report under section 552.130 of the Government Code. However, the remaining information at issue does not contain motor vehicle record information or a personal identification document issued by a Texas agency or another state or country or a local agency authorized to issue an identification document. Therefore, the department may not withhold the remaining information under section 552.130.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of this chapter, 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.” *Id.* § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, the department must withhold the insurance policy numbers it has marked under section 552.136 of the Government Code.

To conclude, the department is not required to release the submitted body worn camera recording. With the exception of the requestor’s name, date of birth, gender, race, and zip code, which the department must release pursuant to section 411.192(b) of the Government Code, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192(a) of the Government Code. The department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code and common-law privacy. The department must withhold the submitted video recording in its entirety under section 552.130 of the Government Code. The department must also withhold the information we have indicated in the audio recording and marked in the police report under section 552.130 of the Government Code. The department must withhold the information it has marked under section 552.136 of the Government Code. The department must release the remaining information.<sup>6</sup>

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.

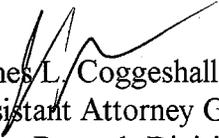
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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<sup>6</sup>Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

[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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bhf

Ref: ID# 625719

Enc. Submitted documents

c: Requestor  
(w/o enclosures)