



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2016

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2016-22532

Dear Mr. Scott:

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# 629746.

The City of Conroe (the "city") received a request for information pertaining to a specified incident as well as a named police officer's body worn camera recordings for a specified time frame. You indicate the city does not have some of the requested information.¹ You state the city has released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108 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." *Id.* § 552.101. This section encompasses information made confidential by other statutes. We note the submitted information consists of three recordings from a body worn camera. 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 provides, in relevant part, the following:

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(a) 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, we note the requestor does not provide the requisite information under section 1701.661(a) for two of the body worn camera video recordings. As these body worn camera recordings, which we indicated, were not properly requested by the requestor pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and these recordings need not be released to him.² However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (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).

We note the requestor provides the requisite information for the remaining body worn camera recording. The body worn camera recording at issue reflects it was required to be made by law or the policies of the city’s police department and the information at issue reflects the recording relates to a law enforcement purpose. *See id.* § 1701.661(h). Further, we have no indication the recording at issue could not be used as evidence in a criminal prosecution. *See id.* § 1701.661(d) (stating information “that is or could be used as evidence in a criminal prosecution is subject to the requirements of [the Act.]”). 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). 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). You inform us the body worn camera recording at issue involves the investigation of conduct that constitutes a misdemeanor punishable by fine only and which

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

did not result in an arrest. The city does not indicate it has permission for release from all the subjects of the recording at issue. *See id.* Accordingly, we find the city must withhold the body worn camera recording at issue under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.³

In summary, the city need not release the body worn camera recordings we indicated pursuant to chapter 1701 of the Occupations Code. The city must withhold the remaining body worn camera recording, which we also indicated, under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

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

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 629746

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.