



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 20, 2017

Ms. Charla Thomas  
Deputy City Attorney  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2017-05679

Dear Ms. Thomas:

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# 649646.

The City of Temple (the "city") received two requests for copies of reports and videos regarding a specified incident. You state you will release some information. You state you do not have some information.<sup>1</sup> You claim a portion of the submitted information was not properly requested under chapter 1701 of the Occupations Code. You claim some of the submitted information is excepted from disclosure under section 552.1085 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, the submitted information includes city police department officers' body worn camera recordings. 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:

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<sup>1</sup>The 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 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 requestors did not give the requisite information under section 1701.661(a). As the requestors did not properly request the body worn camera recordings 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 552.1085 of the Government Code, provides, in pertinent part:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

(d) Notwithstanding Subsection (c) and subject to Subsection (e), the following persons may view or copy information that constitutes a sensitive crime scene image from a governmental body:

- (1) the deceased person’s next of kin[.]

Gov’t Code § 552.1085(c), (d)(1). For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person’s genitalia.” *See id.* § 552.1085(a)(6). You state some of the submitted photographs consist of sensitive crime scene images taken as part of a criminal case that is closed. Further, it appears none of the exceptions in section 552.1085 apply to the second requestor. Based on your representations and our review, we agree the photographs we indicated consist of sensitive crime scene images for the purposes of section 552.1085. Therefore, the city must withhold the photographs we indicated under section 552.1085(c) of the Government Code from the

second requestor. However, the remaining photographs do not consist of a sensitive crime scene image for purposes of section 552.1085 and may not be withheld on that basis.

We note, however, the first requestor may be the next of kin of the deceased person depicted in the photographs under section 552.1085. *See id.* § 552.1085(a)(1) (defining “deceased person’s next of kin”). In that event, the first requestor would have a right to view or copy the photographs we indicated pursuant to section 552.1085(d)(1). *See id.* § 552.1085(d)(1). As we are unable to determine whether the first requestor is the deceased person’s next of kin, we must rule conditionally. If the first requestor is not the deceased person’s next of kin, then the city also must withhold the photographs we indicated under section 552.1085(c) of the Government Code from the first requestor. If the first requestor is the deceased person’s next of kin, then the city may not withhold the photographs we indicated pursuant to section 552.1085 but, instead, must release such information to him.

In summary, as the requestors did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information, and the city need not release it in response to this request for information. The city must withhold the photographs we indicated under section 552.1085(c) of the Government Code from the second requestor. Further, if the first requestor is not the deceased person’s next of kin, then the city also must withhold the photographs we indicated under section 552.1085(c) of the Government Code from the first requestor. The city 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](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,



Emily Buchanan  
Assistant Attorney General  
Open Records Division

EB/eb

Ref: ID# 649646

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)