



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 1, 2017

Ms. Ileana Fernandez  
Assistant City Attorney  
City of Mesquite  
P. O. Box 850137  
Mesquite, Texas 75185-0137

OR2017-12006

Dear Ms. Fernandez:

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# 659976.

The Mesquite Police Department (the "department") received a request for body worn camera video recordings for a specified incident. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 department officer's 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). Upon review, we find the requestor in this instance provided the requisite information. We understand the submitted recording was required to be made by law or the policies of the department and the recording relates to a law enforcement purpose. *See id.* § 1701.661(h). Further, we understand 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 incidents that

involve the use of deadly force by an officer or relates to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). However, section 1701.661(f) provides:

A law enforcement agency may not release any portion of a recording made in a private space, or 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.

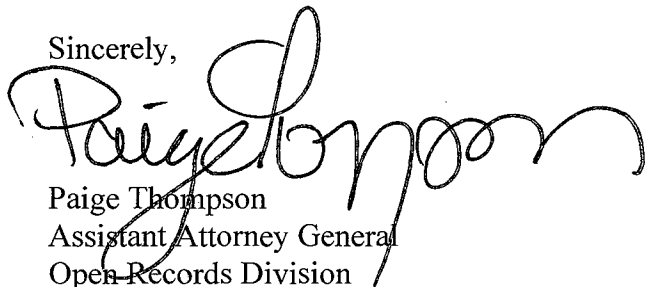
*Id.* § 1701.661(f). Upon review, we are unable to determine whether the recording at issue involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, we must rule conditionally. If the body worn camera recording at issue involves 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 department has received written authorizations for release from all of the subjects of the recording. Accordingly, in this instance, the submitted body worn camera recording is confidential and must be withheld in its entirety under section 552.101 in conjunction with section 1701.661(f). However, if the submitted body worn camera recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, we will address the private space aspect of section 1701.661(f). As previously noted, section 1701.661(f) prohibits the release of body worn camera recordings made in a private space without proper authorization from the person who is the subject of that portion of the recording. *Id.* Upon review, we find portions of the submitted video recording were made in private spaces. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). The department does not indicate it has permission for release from the subjects of the recording made in one of the private spaces at issue. *See id.* § 1701.661(f). Accordingly, we find the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, we note the subject of the remaining portion of the video recording in a private space has consented to the release of the information at issue. Accordingly, in that instance, the department must release the remaining information to this requestor.

In summary, if the submitted body worn camera video recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the recording at issue is confidential and must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the submitted body worn camera video recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code and release the remaining information to this requestor.

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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is written in a cursive style with a large initial "P".

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 659976

Enc. Submitted documents

c: Requestor  
(w/o enclosures)