



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2017

Ms. Tammie Gilbert
Records Division
Silsbee Police Department
1104 North 5th Street
Silsbee, Texas 77656

OR2017-20362

Dear Ms. Gilbert:

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# 674594.

The Silsbee Police Department (the "department") received three requests from different requestors for all audio and video footage of a specified incident and all records and communications containing specified information.¹ You state you released some information. You claim a portion of the submitted information was not properly requested under chapter 1701 of the Occupations Code. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information includes a department officer's body worn camera recording. Body worn cameras are subject to chapter 1701 of the Occupations Code.

¹We note the department sought and received clarification of the information requested in two of the requests. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

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 first requestor does not give the requisite information under section 1701.661(a). As the first requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information as to the first requestor and it need not be released in response to the first request. 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).

However, we note the second and third requestors did provide the requisite information under section 1701.661(a). The submitted body worn camera recording reflects it was required to be made by law or the policies of the department and relates to a law enforcement purpose. *See id.* § 1701.661(h). We understand the recording is or could 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). The submitted body worn camera 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). You state the body worn camera recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in

an arrest. You do not indicate you have permission for release from the subject of the recording at issue. *See id.* Accordingly, we find the department must withhold the body worn camera recording from the second and third requestors under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, the remaining information consists of dashboard and in-car camera recordings from a department vehicle. We find this information does not consist of a department body worn camera recording. Therefore, the remaining information is not subject to section 1701.661 of the Occupations Code and the department may not withhold any portion of the remaining video recordings 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 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.* You state the department lacks the technological capability to redact the motor vehicle record information from the remaining video recordings. Based on this representation, we conclude the department must generally withhold the remaining video recordings in their entirety under section 552.130. *See Open Records Decision No. 364 (1983).* However, we note section 552.130 protects personal privacy, and the video recordings at issue includes motor vehicle record information belonging to the first requestor. Thus, the first requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code, and it may not be withheld from him under section 552.130. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); *Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the department must withhold the remaining video recordings in their entirety from the second and third requestors under section 552.130 of the Government Code. However, the department may not withhold any of the remaining video recordings from the first requestor under section 552.130 of the Government Code.

In summary, as the first requestor did not properly request the body worn camera video recording pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information as to the first requestor, and the department need not release the submitted body camera video recording in response to the first request for information. The department must withhold the body worn camera recording from the second and third requestors under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must withhold the remaining video recordings in their entirety from the second and third requestors under section 552.130 of the Government Code. The department must release the remaining recordings to the first 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, 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
Attorney
Open Records Division

EB/gw

Ref: ID# 674594

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)