



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 16, 2017

Mr. Jonathan T. Koury
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryant, Texas 77805-1000

OR2017-23598

Dear Mr. Koury:

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# 685868.

The City of Bryan (the "city") received multiple requests from one requestor and an additional request from a second requestor for information related to a specified motor vehicle accident. You state you will release some information to the requestor. You claim the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments 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. You state the submitted information consists of a recording from a city police 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). In this instance, the first requestor does not give the requisite information in either of his requests under section 1701.661(a). As this requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach

this information and it need not be released to the first requestor. 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).

We note the second requestor provides the requisite information for the body worn camera recording at issue. We understand the recording at issue was required to be made by law or the policies of the city’s police department (the “department”) and the recording relates to a law enforcement purpose. *See id.* § 1701.661(h). Further, you indicate 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 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 recording at issue 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 information at issue consists of a body worn camera recording involving the 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 city must withhold the submitted body worn camera recording from the second requestor under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

In summary, pursuant to section 1701.661 of the Occupations Code, the submitted body camera recording was not properly requested by the first requestor pursuant to chapter 1701 of the Occupations Code and need not be released to this requestor in response to this request for information. The city must withhold the submitted body worn camera recording from the second requestor 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,

A handwritten signature in black ink, appearing to read 'Tim Neal', with a stylized flourish at the end.

Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 685868

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)