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November 7, 2017

Mr. Joseph J. Gorfida, Jr.
Counsel for the City of DeSoto
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 North Akard Street
1800 Ross Tower
Dallas, Texas 75201

OR2017-25419

Dear Mr. Gorfida:

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# 683336 (Reference No. 89722).

The DeSoto Police Department (the "department"), which you represent, received a request for information pertaining to a specified traffic accident involving the requestor's client. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note and you acknowledge, some of the submitted camera recordings are not responsive to the present request because they do not pertain to the traffic accident specified by the requestor. This ruling does not address the public availability of the non-responsive information, and the department need not release it in response to this request.

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. 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:

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). Upon review of the information at issue, we determine the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recordings at issue. The recordings at issue 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 recordings are 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 recordings document 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 recordings demonstrate they were 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 video recordings at issue consist of body worn camera recordings involving an investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. You state you do not have permission for release from all of the subjects of the recordings at issue. *See id.* Accordingly, we find the

department must withhold the submitted body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.¹

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. Upon review, we find the remaining information contains motor vehicle record information. In this instance, you state the department does not possess the technological capability to redact information from video files. Thus, we find the department must withhold the entireties of the remaining video recordings under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983).

In summary, the department must withhold the submitted body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must withhold the entireties of the remaining video recordings under section 552.130 of the Government 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,



D. Michelle Case
Attorney
Open Records Division

DMC/som

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

Ref: ID# 683336

Enc. Submitted documents

c: Requestor
(w/o enclosures)