



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 16, 2017

Ms. Shea Smith
Assistant City Attorney
City of Sugar Land
2700 Town Center Boulevard North
Sugar Land, Texas 77479-0110

OR2017-26261

Dear Ms. Smith:

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# 684947 (ORR# W002723).

The Sugar Land Police Department (the "department") received a request for information pertaining to a specified accident. The department states it has released some of the requested information. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims 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. The submitted information consists of recordings from department officers' body worn cameras. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code provides:

(a) 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). The department asserts the requestor does not give the requisite information under section 1701.661(a). Therefore, the department argues the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701. Upon review, we find the requestor does not provide the requisite information under section 1701.661(a) for one of the submitted recordings, which we have noted. As the body worn camera recording at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, 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 [s]ubsection (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).

Upon review, we find the instant request includes the information required by section 1701.661(a) of the Occupations Code with respect to the remaining recording at issue. *Id.* Accordingly, we find the requestor properly requested the remaining body worn camera recording at issue. Thus, we will address additional exceptions to disclosure of this information.

The recording 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). 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 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 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). Upon review, we are unable to determine whether 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. Therefore, we must rule conditionally. We note there is no indication the department has received written authorizations for release

from all of the subjects of the recording. Accordingly, 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, then the body worn camera recording at issue is confidential and must be withheld under section 552.101 in conjunction with section 1701.661(f). However, if the 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, then no portion of the recording is confidential under section 1701.661(f) and it may not be withheld under section 552.101 on that basis. In that instance, we will address further exceptions to disclosure of the body worn camera recording that was properly requested.

We note some of the information is subject to section 552.130 of the Government Code.¹ Section 552.130 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. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a) (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, with the exception of motor vehicle record information belonging to the requestor's client, the department must withhold all motor vehicle record information within the remaining video recording under section 552.130 of the Government Code.


In summary, the body worn camera recording we noted was not properly requested pursuant to chapter 1701 of the Occupations Code and it need not be released. If the remaining body worn camera recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then the body worn camera recording at issue is confidential and must be withheld under section 552.101 in conjunction with section 1701.661(f) of the Occupations Code. If the 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, then with the exception of motor vehicle record information belonging to the requestor's client, the department must withhold all motor vehicle record information within the remaining video recording under section 552.130 of the Government Code. The department must release the remainder of the video recording that was properly requested.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 684947

Enc. Submitted documents

c: Requestor
(w/o enclosures)