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ATTORNEY GENERAL OF TEXAS

December 7, 2017

Ms. Alexis G. Allen
Counsel for the City of Rowlett
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 North Akard Street
1800 Ross Tower
Dallas, Texas 75201

OR2017-27878

Dear Ms. Allen:

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# 688422 (Your File Reference #91364).

The Rowlett Police Department (the "department"), which you represent, received a request for fourteen categories of information related to a specified accident. You indicate you will release some information. You also indicate the department does not have information responsive to portions of the request.¹ You claim the submitted information is excepted from disclosure under section 552.130 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."² Gov't

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²The 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).

Code § 552.101. This section encompasses information made confidential by other statutes. We note, and the department acknowledges, the submitted information contains 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). Upon review, 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. We understand the recordings at issue were required to be made by law or the policies of the department and the recordings relate to a law enforcement purpose. *See* Occ. Code § 1701.661(h). We also understand the recordings at issue are or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Additionally, we have no indication the recordings document an incident that involves the use of deadly force by an officer or relate to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). The submitted 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). Upon review, we are unable to determine whether the recordings at issue involve 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 recordings involve 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 recordings. Accordingly, in this instance, the body worn camera recordings are confidential and must be

withheld under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.³ However, if the recordings at issue do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, no portion of the body worn camera recordings are confidential under section 1701.661(f) and they may not be withheld under section 552.101 on that basis. In this instance, we will address the applicability of section 552.130 of the Government Code to the body worn camera recordings.

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, the submitted information consists of dash camera and body worn camera recordings, some of which contain motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her client's own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, we note the information we have indicated contains the motor vehicle record information of individuals other than the requestor. Furthermore, the department states it does not possess the technological capability to redact information from video files. Thus, we agree the department must withhold the video recordings we have indicated in their entireties under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the department may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

In summary, if the body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the body worn camera recordings must be withheld under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the body worn camera recordings do 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 body worn camera recordings we have indicated in their entireties under section 552.130 of the Government Code. In either event, the department must withhold the entireties of the submitted dash camera recordings we have indicated under section 552.130 of the Government Code. The department must release the remaining information.

³In this instance, as we are able to make this determination, we need not address the department's argument against disclosure of this information.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/som

Ref: ID# 688422

Enc. Submitted documents

c: Requestor
(w/o enclosures)