



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 12, 2017

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

OR2017-28134

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# 688006.

The City of Bryan (the "city") received two requests from different requestors for information pertaining to incident number 17-0801168. The city states it will withhold or release some of the requested information in accordance with the previous determination issued in Open Records Letter No. 2017-23435 (2017). *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city 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. 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 second requestor, who is a representative of the first requestor, provided the information required by section 1701.661(a) of the Occupations Code for release of the submitted body worn camera recordings. The recordings at issue reflect they were required to be made by law or the policies of the city's police department and relate to a law enforcement purpose. *See id.* § 1701.661(h). The city asserts "the body camera video is not being used, nor could [it] be used, in any criminal prosecution." The city adds "[t]here is no pending prosecution in any court of competent jurisdiction nor is there any intent by the [c]ity to begin it." However, we conclude the city has failed to demonstrate the submitted recording could not 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 relate 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). The city states the submitted video recordings 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. The city states it does not have permission for release from all of the subjects of the recordings. *See id.* Accordingly, we

find the city must withhold the body worn camera recordings 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 688006

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)