



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 18, 2017

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

OR2017-28650

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# 688153.

The City of Bryan (the "city") received two requests from the same requestor for information pertaining to a specified incident. You state you will release some information. You claim the submitted information is excepted from disclosure under section 552.101 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." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. The submitted information consists of recordings from a city police department 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 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). In this instance, 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.* § 1701.661(a). Accordingly, we find the requestor properly requested the remaining body worn camera recording at issue. Thus, we will address additional exception to disclosure of this information.

The city indicates the recording at issue was required to be made by law or the policies of the city’s police department and the recording relates to a law enforcement purpose. *See id.* § 1701.661(h). Further, the city indicates 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 made in a private space, or 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 video recording at issue consists of a body worn camera recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and that did not result in an arrest. The city states it has not received permission for release from each of the subjects of the submitted recording. *See id.* Accordingly, we find the city must withhold the remaining body worn camera recording under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations 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. The city must withhold the remaining body worn camera recording 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 cursive script, appearing to read "D. Michelle Case", followed by a horizontal flourish.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/som

Ref: ID# 688153

Enc. Submitted documents

c: Requestor
(w/o enclosures)