



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2019

Ms. Jo Ann Pate
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2019-06238

Dear Ms. Pate:

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# 755205 (ORR# W079735).

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified accident. The department claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the department only submitted a body worn camera recording of an officer. We assume, to the extent any additional responsive information existed when the department received the request for information, the department has released it. If not, then the department must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

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. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code reads as follow:

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). We note the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recording at issue. The recording at issue reflects it was 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). Further, the department has failed to demonstrate the recording could not be used as evidence in a criminal prosecution. *See id.* § 1701.661(d) (information "that is or could be used as evidence in a criminal prosecution is subject to the requirements of [the Act.]"). We also have no indication the body worn camera 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). We note the body worn camera recording was not made in a private space for the purposes of section 1701.661(f). *See id.* § 1701.661(f); *see also id.* 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). However, section 1701.661(f) provides,

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.

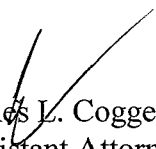
Id. § 1701.661(f). The department states it has not received written authorization for release from the subject of the recording. The department also states the body worn camera recording at issue involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Based on this representation, we conclude the submitted recording is confidential under section 1701.661(f) of the Occupations Code and the department must withhold it under section 552.101 of the Government Code on that ground.

Finally, although the department requests this office to issue a previous determination that would permit it to withhold body-worn camera recordings subject to section 1701.661(c) of the Occupations Code without requesting a ruling from this office, we decline to issue one

at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 755205

Enc. Submitted documents

c: Requestor
(w/o enclosures)