



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 14, 2019

Mr. Matthew Murray
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2019-07068

Dear Mr. Murray:

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# 754494 (PIR# W079608).

The City of Fort Worth (the "city") received a request for information pertaining to a specified traffic accident. You state the city has released some information. You claim 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. This section encompasses information made confidential by other statutes. We note the submitted information consists of police officers' body worn camera recordings. 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). We note 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 submitted recordings were required to be made by law or the policies of the city's police department and the recordings relate to a law enforcement purpose. *See id.* § 1701.661(h). We also understand the recordings at issue were 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 relates to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). 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). You state the submitted information consists of body worn camera recordings involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. However, the submitted information demonstrates the submitted recordings pertain to an investigation of driving while intoxicated. Driving while intoxicated includes confinement as punishment. *See* Penal Code § 49.04(b) (stating offense of driving while intoxicated has minimum confinement of 72 hours). Therefore, the submitted recordings may not be withheld under section 1701.661(f) of the Occupations Code. Accordingly, we will consider if the information at issue is otherwise excepted under the Act.

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.¹ *See* Gov't Code § 552.130(a). The requestor has a right of access to her client's own motor vehicle record information pursuant to section 552.023 of

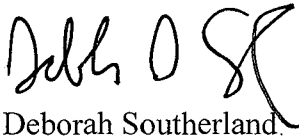
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the Government Code. *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, the city must withhold the motor vehicle record information of an individual other than the requestor’s client, which we indicated, under section 552.130 of the Government Code. The city must release the remaining information.²

You also ask this office to issue a previous determination permitting the city to withhold body worn camera video recordings that relate to an investigation of conduct that constitutes a misdemeanor punishable by fine only that did not result in an arrest pursuant to section 552.101 of the Government Code in conjunction with 1701.661(f) of the Occupations Code without seeking a ruling from this office. *See Gov’t Code* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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,



Deborah Southerland
Attorney
Open Records Division

DS/eb

²We note the requestor has a right of access to some of the information being released. *See Gov’t Code* § 552.023(a); ORD 481 at 4. Thus, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 754494

Enc: Submitted documents

c: Requestor
(w/o enclosures)