



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 22, 2019

Ms. Kayla Landeros
City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2019-08080

Dear Ms. Landeros:

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# 753974.

The City of Temple (the "city") received a request for information pertaining to a specified accident. The city claims the requestor did not properly request some information pursuant to section 1701.661 of the Occupations Code. Additionally, the city claims the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the city's submitted arguments 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 recordings from a city police 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:

¹We note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. See Gov't Code § 552.301(e). Nonetheless, as section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. See *id.* §§ 552.007, .302, .352.

(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). The city claims the requestor did not provide the information required by section 1701.661(a) for release of the body worn camera recordings at issue. 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 city's police 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:

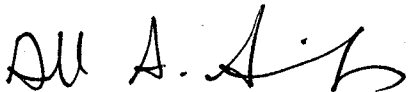
A law enforcement agency may not release any portion . . . of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

Id. § 1701.661(f). The city states the submitted recordings pertain to the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. The city informs us it has not received written authorizations for release from all of the subjects of the recording. *See id.* Accordingly, we find the city must withhold the submitted information 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 black ink, appearing to read "Gerald A. Arismendez". The signature is stylized and cursive.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 753974

Enc. Submitted documents

c: Requestor
(w/o enclosures)