



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2019

Mr. Christopher K. Austria
Assistant City Attorney
City of Fort Worth
200 Texas Street, Third Floor
Fort Worth, Texas 76102

OR2019-08739

Dear Mr. Austria:

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# 757025 (ORR# W080160).

The Fort Worth Police Department (the "department") received a request for body worn camera recordings related to a specified car crash. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 department officers' body worn cameras. 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, the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recordings. The submitted recordings reflect they were required to be made by law or the policies of the department and relate to a law enforcement purpose. *See id.* § 1701.661(h). Further, the department has not demonstrated the recordings 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 body worn camera 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 body worn camera 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). In this instance, the department states “the requestor has not provided the information required by section 1701.661(f) of the Occupations Code.” Thus, we understand the department not received written authorizations for release from all of the subjects of the recordings. Upon review, however, we are unable to determine whether the body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, we must rule conditionally. If the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then the submitted body worn camera recordings are confidential and the department must withhold them under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, if the submitted body worn camera recordings do not

involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and that did not result in arrest, then no portion of the recordings is confidential under section 1701.661(f) and the department may not withhold the information under section 552.101 on that basis. In that instance, we will consider additional exceptions to disclosure of the submitted information.

We note some of the information is subject to section 552.130 of the Government Code.¹ Section 552.130 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. *See* Gov't Code § 552.130. Accordingly, with the exception of any motor vehicle record information belonging to the requestor's client, the department must withhold all visible and audible driver's license numbers, license plates, and vehicle registration stickers under section 552.130 of the Government Code. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

In summary, if the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then the department must withhold them under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the submitted body worn camera recordings do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and that did not result in arrest, then with the exception of any motor vehicle record information belonging to the requestor's client, the department must withhold all visible and audible driver's license numbers, license plates, and vehicle registration stickers under section 552.130 of the Government Code and must release the remaining information.

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

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).

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 "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 757025

Enc. Submitted documents

c: Requestor
(w/o enclosures)