



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 11, 2019

Mr. Christopher K. Austria
Assistant City Attorney
City of Fort Worth
200 Texas Street, Third Floor
Fort Worth, Texas 76102-6311

OR2019-15664

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# 769847 (ORR# W082913).

The Fort Worth Police Department (the "department") received a request for information related to report number 190019982. The department states it is releasing some of the requested information. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception the department 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. 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:

¹The department acknowledges it did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because the exception the department claims 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 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). Upon review of the information at issue, we determine the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the submitted body worn camera recordings. The recordings at issue 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). We understand the recordings are or could 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 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). The 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). We note there is no indication the department 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 at issue 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 the recordings are not confidential under section 1701.661(f) and the department

may not withhold them under section 552.101 on that basis. In that instance, we will consider additional exceptions to disclosure of the information at issue.

We note some of the submitted information is subject to section 552.130 of the Government Code.² 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. *See* Gov't Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *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). Accordingly, with the exception of any motor vehicle record information belonging to the requestor's client, the department must withhold all windshield registration stickers, license plates, and driver's licenses, including any audible license plate and driver's license numbers, within the submitted video recordings under section 552.130 of the Government Code.

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. 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 with the exception of any motor vehicle record information belonging to the requestor's client, the department must withhold all windshield registration stickers, license plates, and driver's licenses, including any audible license plate and driver's license numbers, within the submitted video recordings 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/>

²The 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).

[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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 769847

Enc. Submitted documents

c: Requestor
(w/o enclosures)