



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 3, 2019

Mr. Jose Hernandez  
Records Supervisor  
City of Edinburg  
1702 South Closner Boulevard  
Edinburg, Texas 78539

OR2019-18322

Dear Mr. Hernandez:

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# 773639.

The Edinburg Police Department (the "department") received two requests from the same requestor for information pertaining to a specified case.<sup>1</sup> You claim the requestor did not properly request the submitted body worn camera recordings pursuant to section 1701.661 of the Occupations Code. We have considered your argument and reviewed the submitted information.

Initially, we note you have submitted only body worn camera recordings. To the extent any other responsive information existed and was maintained by the department on the date the department received the requests for information, we presume the department has released it. If not, the department must do so at this time. *See Gov't Code §§ 552.301, .302; see also Open Records Decision No. 664 (2000)* (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

The submitted information consists of 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:

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<sup>1</sup>As you did not submit the requestor's first written request for information, we take our description from your brief to this office.

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 submitted information, we determine the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of one of the body worn camera recordings at issue. However, we are not able to determine whether the requestor provided the requisite information under section 1701.661(a) for the remaining body worn camera recording. Thus, we rule in the alternative. To the extent the requestor did not provide the requisite information under section 1701.661(a), the requestor did not properly request the body worn camera recording we indicated pursuant to chapter 1701. In that instance, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b). To the extent the requestor did provide the requisite information under section 1701.661(a) for the remaining body worn camera recording, the department may not withhold any portion of the recording on that basis. Accordingly, we will consider if the properly requested body worn camera recordings are otherwise excepted from disclosure.

Next, we must address the department’s obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov’t Code § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You state the department received the first request for information on April 23, 2019. As of this date, you have not submitted to this office a copy of the first written request for information. Accordingly, we conclude the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling

reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Because section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this section to the remaining information.<sup>2</sup>

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. Accordingly, the department must withhold all audible and visible license plates and driver's license numbers in the body worn camera recordings under section 552.130 of the Government Code.

In summary, pursuant to section 1701.661 of the Occupations Code, to the extent the requestor did not properly request the body worn camera recording we indicated pursuant to chapter 1701, it need not be released to the requestor. The department must withhold all audible and visible license plates and driver's license numbers in the body worn camera recordings under section 552.130 of the Government Code. The department 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](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,



D. Michelle Case  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>The 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).

Ref: ID# 773639

Enc. Submitted documents

c: Requestor  
(w/o enclosures)