



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 30, 2019

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

OR2019-24420

Dear Mr. Qualls:

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# 783438 (PIR No. W086629).

The Fort Worth Police Department (the "department") received a request for all records pertaining to a specified incident. You state you released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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. The submitted information consists of a body worn camera recording of a department police officer. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code states the information a requestor must provide when seeking a body worn camera recording. Occ. Code § 1701.661(a). We note the requestor provided the requisite information for the body worn camera recording at issue. We understand the recording was required to be made by law or the policies of the department and relates to a law enforcement purpose. *See id.* § 1701.661(h). Further, we understand the recording is or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). We also have no indication the body worn camera recording documents 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 the body worn camera

recording was not made in a private space for the purposes of section 1701.661(f). *See id.* § 1701.661(f); *see also id.* 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). 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 department states the body worn camera recording at issue involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. The department also states it has not received written authorization for release from each subject of the recording. Based on these representations, we conclude the submitted recording is confidential under section 1701.661(f) of the Occupations Code and the department must withhold it under section 552.101 of the Government Code on that ground.

Finally, although the department requests a previous determination permitting it to withhold certain information under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code without the necessity of requesting a decision from this office under section 552.301 of the Government Code, we decline to issue one at this time. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Accordingly, this letter ruling is limited to the particular records 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 records or 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Pearlie Gault", with a long horizontal line extending to the right from the end of the signature.

Pearlie Gault
Attorney
Open Records Division

PG/eb

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Enc. Submitted documents

c: Requestor
(w/o enclosures)