



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 3, 2019

Ms. Jo Ann Pate
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2019-24511

Dear Ms. Pate:

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# 783581 (PIR No. W086490).

The Fort Worth Police Department (the "department") received a request for all information pertaining to a specified incident. You state you will release 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 contains recordings from department police officers' body worn cameras. 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. *See* Occ. Code § 1701.661(a). We note the requestor provides the requisite information for the body worn camera recordings at issue. We understand the submitted recordings were required to be made by law or the policies of the department and the recordings relate to a law enforcement purpose. *See id.* § 1701.661(h). Further, we understand the recordings 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 relates 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). You state 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. You also state you have not received a written authorization for release from all of the subjects of the recordings. *See id.* Accordingly, we find the department must withhold the submitted body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

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 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 that reads "Pearlie Gault". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Pearlie Gault
Attorney
Open Records Division

PG/eb

Ms. Jo Ann Pate - Page 3

Ref: ID# 783581

Enc. Submitted documents

c: Requestor
(w/o enclosures)