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ATTORNEY GENERAL OF TEXAS

October 2, 2019

Ms. Dawn Roberts
Ms. Pamela Denholm
Assistant City Attorneys
City of Arlington
Mail Stop 04-0200
P. O. Box 1065
Arlington, Texas 76004-1065

OR2019-27561

Dear Ms. Roberts and Ms. Denholm:

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# 788823 (Reference Nos. 83404 and 83451).

The Arlington Police Department (the "department") received a request for body worn camera video recordings pertaining to a specified incident. The department received a second request from a different requestor for multiple categories of information, including body worn camera recordings, pertaining to the same incident. 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.

Initially, we note you have only submitted a body worn camera recording pertaining to the specified incident. To the extent any information responsive to the remaining portions of the second request existed on the date the department received the second request, we assume the department has released it to the second requestor. If the department has not released any such information to the second requestor, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

As noted above, the submitted information consists of a department officer's body worn camera recording. 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. 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:

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 second requestor does not give the requisite information under section 1701.661(a). As the second requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information as to the second requestor, and it need not be released in response to the second request.¹ 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).

However, we note the first requestor did provide the requisite information under section 1701.661(a). We understand the submitted body worn camera 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). We understand the recording is 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 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, 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.

¹As we are able to make this determination, we need not address your argument against disclosure of this information with respect to the second request.

Id. § 1701.661(f). Upon review, we find a portion of the submitted video recording was made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). Furthermore, you state the video recording at issue pertains to the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. You state the department has not received written authorizations for release from all subjects of the recording. *See id.* Accordingly, we find the department must withhold the body worn camera recording from the first requestor under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

In summary, as the second requestor did not properly request the body worn camera video recording pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information as to the second requestor, and the department need not release the submitted body camera video recording in response to the second request for information. The department must withhold the submitted body worn camera recording from the first requestor under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

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 <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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/be

Ref: ID# 788823

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)