



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2019

Mr. Christopher K. Austria
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2019-28285

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# 790009 (ORR# W088235).

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified accident. The department states it will release some of the requested information, but claims the submitted information is either not subject to release pursuant to chapter 1701 of the Occupations Code or excepted from disclosure under section 552.130 of the Government Code.¹ We have considered the submitted arguments 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 city police officer. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) provides the following:

¹ The department states it did not comply with the requirements of section 552.301 of the Government Code. See Gov't Code § 552.301(b). Regardless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider whether the submitted information must be withheld under the Act on that ground.

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). The department claims the requestor did not provide the information required by section 1701.661(a) for release of the body worn camera recording at issue. Upon review, 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 recording. We understand the recording was required to be made by law or the policies of the department and the recording relates to a law enforcement purpose. *See id.* § 1701.661(h). Further, the department has failed to demonstrate the recording could not be used as evidence in a criminal prosecution. *See id.* § 1701.661(d) (information “that is or could be used as evidence in a criminal prosecution is subject to the requirements of [the Act.]”). 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,

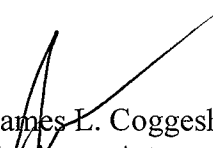
A law enforcement agency may not release any portion . . . of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person’s authorized representative.

Id. § 1701.661(f). The department states it has not received written authorization for release from the subject of the recording. The department also states the body worn camera recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Based on this representation, 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.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 790009

Enc. Submitted documents

c: Requestor
(w/o enclosures)