



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2019

Mr. Eric C. Farrar
Counsel for the City of Humble
Olson & Olson, LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2019-30903

Dear Mr. Farrar:

This office issued a letter to the City of Humble (the “city”) for ID# 788155 on August 14, 2019. Since that date, we have received new information that affects the facts on which this letter was based. Consequently, this decision serves as the correct ruling and is a substitute for the letter issued on August 14, 2019. *See generally* Gov’t Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the “Act”), chapter 552 of the Government Code). This ruling was assigned ID# 794943 (COH PIR19-197).

The city, which you represent, received a request for two categories of information pertaining to a specified traffic stop.¹ You claim the requestor did not properly request the responsive body worn camera recording pursuant to section 1701.661 of the Occupations Code. Additionally, you claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See id.* § 552.304 (interested party may submit comments stating why information should or should not be released).

¹ You state, and provide documentation showing, the city sought and received clarification of the information requested. *See* Gov’t Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, we note you have not submitted information responsive to the portion of the request for any citations or written warnings pertaining to the specified traffic stop. To the extent any information responsive to this portion of the request existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See id.* §§ 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).

Next, we note the responsive information includes a police officer's body worn camera recording. 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 provides, in relevant part, the following:

(a) 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 requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recording at issue was not properly requested pursuant to chapter 1701, our ruling does not reach this information and it need not be released.² However, pursuant to section 1701.661(b), a "failure to provide all the information required by [s]ubsection (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).

Next, we must address the city'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

² As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The city received the clarified request for information on July 12, 2019. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the city was required to provide the information required by section 552.301(e) by August 2, 2019. The city provided most of the information required by section 552.301(e) in an envelope postmarked July 23, 2019. However, the envelope in which the city provided the remaining information required by section 552.301(e) was postmarked August 27, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with respect to the information submitted via the envelope postmarked August 27, 2019.

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). The city claims sections 552.108 and 552.130 of the Government Code for the information at issue. Because section 552.130 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the information at issue. However, we find the city has failed to establish a compelling reason to address its remaining exception.

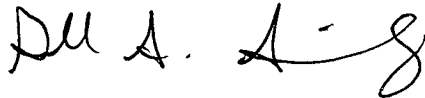
Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. Upon review, we find the submitted video recording contains motor vehicle record information. In this instance, you state the city does not possess the technological capability to redact information from video files. Thus, we agree the city must withhold the submitted video recording in its entirety under section 552.130 of the Government Code. *See Open Records Decision No. 364 (1983).*

In summary, pursuant to section 1701.661 of the Occupations Code, our ruling does not reach the body worn camera recording at issue and it need not be released. The city must withhold the submitted video recording in its entirety under section 552.130 of the Government 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,

A handwritten signature in black ink, appearing to read "Gerald Arismendez". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 794943

Enc. Submitted documents

c: Requestor
(w/o enclosures)