



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 18, 2019

Mr. Robert Schell
Assistant County & District Attorney
Ellis County & District Attorney's Office
109 South Jackson
Waxahachie, Texas 75165

OR2019-35895

Dear Mr. Schell:

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# 802509.

The Ellis County & District Attorney's Office (the "CDAO") received a request for six categories of information pertaining to a specified open records request, specified payments, a specified complaint, and specified body worn camera footage. The CDAO indicates it has no information responsive to portions of the request.¹ The CDAO states it will release some information to the requestor upon payment of a cost estimate. The CDAO claims the requestor did not properly request the submitted body worn camera recording pursuant to section 1701.661 of the Occupations Code. The CDAO also claims the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the CDAO's arguments and reviewed the submitted information.

As previously noted, the submitted information includes a law enforcement 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:

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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).

We note the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov’t Code § 552.022(a)(3). The remaining information consists of invoices relating to the expenditure of funds by the CDAO that are subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* The CDAO seeks to withhold the remaining information under sections 552.108 and 552.111 of the Government Code. However, sections 552.108 and 552.111 are discretionary in nature and do not make information confidential under the Act. *See Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver).* Therefore, the CDAO may not withhold the remaining information under section 552.108 or section 552.111 of the Government Code.

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

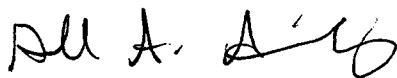
Additionally, we note the attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. See TEX. R. CIV. P. 192.5. The Texas Supreme Court has held “[t]he Texas Rules of Civil Procedure are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” See TEX. R. CIV. P. 2. Thus, because the information at issue relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply, and the CDAO may not withhold the remaining information on that basis. Accordingly, the CDAO must release the remaining information pursuant to section 552.022(a)(3) of the Government Code.

In summary, as the submitted body worn camera recording was not properly requested pursuant to section 1701.661 of the Occupations Code, our ruling does not reach this information and it need not be released. The CDAO must release the remaining information pursuant to section 552.022(a)(3) 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,



Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/jxd

Ref: ID# 802509

Enc. Submitted documents

c: Requestor
(w/o enclosures)