



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 3, 2020

Ms. Karen Strand  
Senior Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2020-00120

Dear Ms. Strand:

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# 804222.

The Mesquite Police Department (the "department") received two requests from the same requestor for information regarding the arrest of the requestor's client on a specified date.<sup>1</sup> 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 the submitted information contains police officers' body worn camera recordings. 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:

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<sup>1</sup> We note the requestor modified her first request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). See also *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

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 give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.<sup>2</sup> 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).

Section 552.101 of the Government Code exempts 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 protected by other statutes. Section 261.201 of the Family Code provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile

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

Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). The remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect by the department. *See id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. Although the requestor may be a parent of a child victim, the requestor is alleged to have committed the abuse or neglect. Thus, regardless of whether the requestor is a parent of a child victim, the requestor would not have a right of access to the remaining information under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must generally withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, the remaining information includes recordings that are subject to article 2.1396 of the Code of Criminal Procedure, which provides:

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

- (1) the stop;
- (2) the arrest;
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test;  
or
- (4) a procedure in which a specimen of the person’s breath or blood is taken.

Crim. Proc. Code art. 2.1396. The remaining information includes video recordings made by or at the direction of an officer employed by the department that contain footage of the requestor being stopped or arrested on suspicion of an offense under section 49.045 of the

Penal Code. *See* Penal Code § 49.045 (driving while intoxicated with a child passenger). Thus, the requestor is entitled to receive these portions of the video recordings pursuant to article 2.1396 of the Code of Criminal Procedure.

However, there is a conflict between the confidentiality provided under section 261.201(a) of the Family Code and the right of access provided under article 2.1396 of the Code of Criminal Procedure for the portions of the video recordings at issue. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *Cuellar v. State*, 521 S.W.2d 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Although section 261.201(a) generally pertains to all records of alleged or suspected child abuse or neglect, article 2.1396 specifically pertains to videos pertaining to stops or arrests on suspected violations of sections 49.04, 49.045, 49.07, and 49.08 of the Penal Code. Therefore, we find article 2.1396 is more specific than, and prevails over, section 261.201. We also note article 2.1396 is the later enacted statute. *See* Gov't Code § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute latest in enactment prevails). Therefore, the department must release any portion of the remaining video recordings that depicts the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the requestor's blood or breath is taken, pursuant to article 2.1396 of the Code of Criminal Procedure.

In summary, as the requestor did not properly request the submitted body worn camera recordings pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The department must release any portion of the remaining video recordings that depicts the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the requestor's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure. The department must withhold remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>3</sup>

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

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<sup>3</sup> We note the requestor has a right of access beyond that of the general public to some of the information being released. *See* Crim. Proc. Code art. 2.1396. Accordingly, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/mo

Ref: ID# 804222

Enc. Submitted documents

c: Requestor  
(w/o enclosures)