



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 22, 2020

Ms. Teresa J. Brown
Senior Open Records Assistants
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2020-02018

Dear Ms. Brown:

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# 807142 (ORR Nos. P004887-103119, P005249-111819, P005582-120619).

The Plano Police Department (the "department") received two requests from the same requestor for information pertaining to a specified incident involving a named individual and a specified administrative investigation. The department received a third request from a different requestor for body worn camera video recordings pertaining to the incident specified by the first requestor. You state the department has released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from an interested party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the first requestor seeks records not requested by the second requestor. Thus, the first two requests are broader than the third request. Accordingly, any submitted information beyond the scope of the third request is not responsive to that request, and the department need not release information to the second requestor that is not responsive to his request for information.

The submitted information includes 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 the following:

¹ We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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). We note the first requestor provided the requisite information under section 1701.661(a) for the body worn camera recordings responsive to her requests. We further note the second requestor provided the requisite information under section 1701.661(a) for some of the body worn camera recordings responsive to his request. As these body worn camera recordings were properly requested pursuant to chapter 1701 of the Occupations Code, we will address your argument against their disclosure. However, the second requestor did not give the requisite information under section 1701.661(a) for the remaining body worn camera recording at issue. As the second requestor did not properly request the remaining body worn camera recording, which we indicated, pursuant to chapter 1701, our ruling does not reach this information, and it need not be released to the second requestor.² 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 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the remaining body worn camera recordings pertain to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information at issue. Accordingly, the department may withhold the remaining body worn camera recordings under section 552.108(a)(2) of the Government Code.

You inform us the remaining information at issue was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-08065 (2019). In that ruling, we determined, in part, the following: (1) with the exception of the information we marked and basic information, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code; (2) the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code; and (3)

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

the department must release the remaining information. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Therefore, the department must continue to rely on Open Records Letter No. 2019-08065 as a previous determination and withhold or release the remaining information at issue in accordance with that ruling.³ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

In summary, as the second requestor did not properly request the body worn camera recording we indicated pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released to the second requestor. The department may withhold the remaining body worn camera recordings under section 552.108(a)(2) of the Government Code. The department must continue to rely on Open Records Letter No. 2019-08065 as a previous determination and withhold or release the remaining information at issue in accordance with that ruling.

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/gw

Ref: ID# 807142

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

³ As we are able to make this determination, we need not address your arguments against disclosure of the information at issue.