



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 25, 2020

Ms. Montana Anderson  
Legal Assistant  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604-0060

OR2020-21370

Dear Ms. Anderson:

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# 841788 (ORR# 20-1201).

The Abilene Police Department (the "department") received a request for video recordings related to a specified arrest of a named individual. The department claims some of the information was not properly requested. In addition, the department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the requestor only seeks video footage and you have submitted a police report in addition to the requested information. The report is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

Next, we note 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 provides, in relevant part, the following:

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<sup>1</sup> 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) 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 recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. 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).

Article 2.1396 of the Code of Criminal Procedure 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. As you acknowledge, the remaining video recordings were made by or at the direction of officers employed by the department and contain footage of the requestor’s client being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. *See* Penal Code § 49.04 (“A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.”). Therefore, the requestor is entitled to receive copies of the remaining video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. Although the department asserts section 552.108 to withhold this information, a statutory right of access prevails over the Act’s general exceptions to public disclosure. *See, e.g.,* Open Records Decision Nos. 613 at 4 (1993), 451 (1986). Because section 552.108 is a general exception under the Act, the

requestor's statutory right of access under article 2.1396 prevails over the department's arguments, and the department may not withhold the remaining video recordings that depict the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the blood or breath of the requestor is taken under section 552.108 of the Government Code. Accordingly, the department must release the remaining video recordings pursuant to article 2.1396 of the Code of Criminal Procedure.

In summary, the submitted body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code and they need not be released. The department must release the remaining video recordings pursuant to article 2.1396 of the Code of Criminal Procedure.<sup>2</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 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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/rm

Ref: ID# 841788

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> We note the requestor has a right of access to the information being released. *See* Crim. Proc. Code art. 2.1396. Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.