



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2020

Ms. Sheila Holloway
Records Clerk
Bellmead Police Department
701 Maxfield Street
Bellmead, Texas 76705

OR2020-23378

Dear Ms. Holloway:

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# 844900.

The Bellmead Police Department (the "department") received a request for information related to a specified incident. You claim some of the requested information was not properly requested pursuant to section 1701.661(a) of the Occupations Code. You also claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments.

Initially, you state the requested information includes 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:

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 gives the requisite information under section 1701.661(a). As the body worn camera recordings at issue were properly requested pursuant to chapter 1701 of the Occupations Code, we will address your argument against their disclosure, as well as against disclosure of the remaining requested information.

Next, we note some of the requested information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2020-17796 (2020). In that ruling, we determined the department may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Thus, to the extent the requested information is identical to the information previously requested and ruled upon, the department may continue to rely on Open Records Letter No. 2020-17796 as a previous determination and withhold the identical information at issue in accordance with that ruling. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the applicability of the Act to the remaining requested information.

Finally, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to subsection 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated 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 requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). The department received the request for information on July 7, 2020. However, as of the date of this letter, you have not submitted for our review a copy or representative sample of the information requested. Consequently, we find you failed to comply with the requirements of section 552.301 in requesting this decision from our office.

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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Although you raise an exception to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information

excepted from disclosure. Thus, we have no choice but to order the remaining requested information released pursuant to section 552.302.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the department may continue to rely on Open Records Letter No. 2020-17796 as a previous determination and withhold the identical information at issue in accordance with that ruling. The department must release the remaining information pursuant to section 552.302 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/jm

Ref: ID# 844900

c: Requestor