



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 21, 2020

Ms. Leslie A. Whitten
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2020-23760

Dear Ms. Whitten:

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# 845290 (File No. A20-001153).

The College Station Police Department (the "department") received a request for certain information pertaining to a specified incident. You state you have released some information to the requestor. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information, which we indicated, is not responsive to the instant request for information because it does not pertain to the specified incident. 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.¹

Next, we address the requestor's contention he may have a right of access to the information at issue under section 730.007(a) of the Transportation Code. *See id.* § 552.130(b); Transp. Code § 730.007(a) (personal information obtained in connection with motor vehicle record may be disclosed under certain circumstances). We note that chapter 730 is applicable to

¹ As we are able to make this determination, we need not address the submitted arguments against disclosure of this information.

an “agency . . . that compiles or maintains motor vehicle records.” Transp. Code § 730.003(1). The department is not an agency as defined by section 730.003(1). Therefore, chapter 730 does not apply to the department. Accordingly, we conclude the requestor does not have a right of access to this information pursuant to chapter 730 of the Transportation Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. 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. Occ. Code § 1701.661(a). In this instance, the requestor provided the requisite information required by section 1701.661(a) of the Occupations Code. However, section 1701.661(f) provides, in relevant part, as follows:

A law enforcement agency may not release any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person’s authorized representative.

Id. § 1701.661(f). You state the recording at issue is a body worn camera recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in arrest. Although the requestor argues section 552.023 of the Government Code gives the requestor a right of access to the information at issue, we note section 1701.661(f) protects the privacy of all subjects of the video and requires the consent of each subject for the information to be released. You state the department does not have written authorization for release from all of the subjects of the recording. *See* Gov’t Code § 552.023(b) (“A governmental body may not deny access to information to the person, or the person’s representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person’s privacy interests.”); Occ. Code § 1701.661(f). Accordingly, the responsive portions of the body worn camera recording are confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.²

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->

² As our ruling is dispositive, we need not address the remaining argument against disclosure of the information at issue.

[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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/mo

Ref: ID# 845290

Enc. Submitted documents

c: Requestor
(w/o enclosures)