



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 30, 2020

Mr. Brandon S. Shelby  
City Attorney  
City of Sherman  
P.O. Box 1106  
Sherman, Texas 75091

OR2020-24617

Dear Mr. Shelby:

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# 846520 (OR-4802/ SPD #261).

The Sherman Police Department (the "department") received a request for the body worn camera recordings pertaining to a specified incident.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. 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 understand the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We also understand the department sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate on July 16, 2020. *See* Gov't Code § 552.2615.

<sup>2</sup> Although the department does not cite to section 552.101 of the Government Code in its brief, we understand the department to raise this exception based on the substance of its argument.

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). The submitted information consists of police officers' body worn camera recordings. We note the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recordings at issue. The submitted recordings reflect they were required to be made by law or the policies of the department and relate to a law enforcement purpose. *See id.* § 1701.661(h). We note, however, section 1701.661(c) and section 1701.661(d) provide:

(c) Except as provided by Subsection (d), information recorded by a body worn camera and held by a law enforcement agency under this subchapter is not subject to the requirements of Section 552.021, Government Code.

(d) Information that is or could be used as evidence in a criminal prosecution is subject to the requirement of Section 552.021, Government Code.

*Id.* § 1701.661(c)-(d). You generally assert the submitted information is excepted from disclosure under section 1701.661(d). Upon review, we find you have failed to demonstrate the body worn camera recordings at issue could not be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Therefore, we conclude the body worn camera recordings at issue are not confidential under section 1701.661(c) of the Occupations Code and the department may not withhold them under section 552.101 of the Government Code on that basis. However, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion of a recording made in a private space . . . 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). Upon review, we find portions of the submitted body worn camera recordings were made in a private space. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). We have no indication the department received a written authorization for release from all of the subjects of the recordings. *See id.* § 1701.661(f). Accordingly, the department must withhold the portions of the recordings made in a private space, which we have indicated, under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal

identification document issued by an agency of this state or another state or country is excepted from public release.<sup>3</sup> *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code.

In summary, the department must withhold the portions of the recordings made in a private space, which we have indicated, under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code. The department must release the remaining information.<sup>4</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,

Alexandra C. Burks  
Attorney  
Open Records Division

ACB/rm

Ref: ID# 846520

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup> We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.