



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2020

Ms. Alicia K. Kreh
Counsel for the City of Weatherford
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6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2020-25161

Dear Ms. Kreh:

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# 847657 (Ref. No. W002079-072120).

The Weatherford Police Department (the "department"), which you represent, received a request for body worn camera and dashboard camera video recordings pertaining to the arrest of the requestor's client. You state the department will redact social security numbers under section 552.147(b) of the Government Code and information pursuant to Open Records Decision No. 684 (2009).¹ You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments 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

¹ Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

seeking a body worn camera recording. Section 1701.661 provides, in relevant part, the following:

(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). You assert the requestor does not give the requisite information under section 1701.661(a) for portions of the body worn camera recordings at issue. In this instance, we agree the requestor does not provide the requisite information under section 1701.661(a) for some of the submitted body worn camera recordings. Therefore, as the information at issue, which we have indicated, was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released.² 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). We note the instant request includes the information required by section 1701.661(a) with respect to the remaining body worn camera recordings at issue. *Id.* § 1701.661(a). Accordingly, we find the requestor properly requested the remaining body worn camera recordings at issue. However, section 1701.661(f) provides, in relevant part, as follows:

A law enforcement agency may not release any portion ... 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 body worn camera recordings at issue involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. However, we note the recordings involve an investigation of Driving While Intoxicated, which is a misdemeanor that includes confinement as a punishment. *See* Penal Code § 49.04(b). Thus, we find you have failed to demonstrate the recordings at issue involve the investigation of conduct that constitutes a misdemeanor punishable by fine only. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code on that basis.

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

We note, and you acknowledge, some of the remaining information is subject to article 2.1396 of the Code of Criminal Procedure, which 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. The remaining information consists of video recordings made by or at the direction of an officer employed by the department that 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 a copy of these portions of the video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. Although you seek to withhold the information at issue under section 552.108 of the Government Code, 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 access under article 2.1396 of the Code of Criminal Procedure prevails. Therefore, the department must release any portion of the remaining video recordings that depicts the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the blood or breath of the requestor's client is taken, pursuant to article 2.1396 of the Code of Criminal Procedure. However, we will consider your arguments against disclosure of the remaining portions of the video recordings at issue.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue pertains to an active criminal investigation or prosecution. Based on this representation,

we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, as the submitted body worn camera recordings we have indicated 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. The department must release any portion of the remaining video recordings that depicts the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the blood or breath of the requestor's client is taken, pursuant to article 2.1396 of the Code of Criminal Procedure.³ The department may withhold the remaining information under section 552.108(a)(1) 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jxd

Ref: ID# 847657

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the requestor has a right of access to some of 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.