



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2020

Mr. Matthew Murray
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2020-25808

Dear Mr. Murray:

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# 849522 [PIR W103281].

The City of Fort Worth (the "city") received a request for body worn camera recordings pertaining to a specified incident. 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 representative sample of information.¹ 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).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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

¹We 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.

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 the investigation at issue is not a misdemeanor punishable by fine only, whether the information at issue relates to a misdemeanor punishable by fine only and which did not result in arrest is a question of fact. Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* ORD 552 at 4. Accordingly, based upon the city's representation and our review, we find the body worn camera recording is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

Finally, the city asks this office to issue a previous determination that would permit it to withhold certain body worn camera recordings subject to section 1701.661(f) of the Occupations Code under section 552.101 of the Government Code without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/gw

Ref: ID# 849522

Enc. Submitted documents

c: Requestor
(w/o enclosures)