



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 5, 2020

Mr. Ryan Brooke  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2020-27790

Dear Mr. Brooke:

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# 852654 (ORR 2879).

The City of Lubbock (the "city") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1085 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a body worn camera recording pertaining to the incident specified in the present request. 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). We note the present request includes the information required by section 1701.661(a) with respect to the body worn camera recording pertaining to the specified incident. *Id.* § 1701.661(a). Thus, because the requestor properly requested the body worn camera recording, we will consider your arguments against disclosure of this information.

Next, you state the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2020-07163 (2020). In Open Records Letter No. 2020-07163, we determined, in part, the submitted body camera recording at issue was not properly requested pursuant to chapter 1701 of the Occupations Code and need not be released. As noted above, the body worn camera recording pertaining to the specified incident has now been properly requested pursuant to section 1701.661(a) of the Occupations Code. Thus, with respect to the properly requested body worn camera recording, we find the circumstances have changed and the city may not rely on Open Records Letter No. 2020-07163 as a previous determination with respect to this information. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we have no indication the law, facts, or circumstances on which the previous ruling was based have changed with respect to the remaining information at issue in Open Records Letter No. 2020-07163. Accordingly, with the exception of the properly requested body worn camera recording, we conclude the city may rely on Open Records Letter No. 2020-07163 as a previous determination and withhold or release the requested information in accordance with that ruling.<sup>1</sup>

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue pertains to a criminal investigation that did not result in a conviction or deferred adjudication. Based on your representations, we find the city may withhold the submitted body worn camera recording under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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<sup>1</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure.

In summary, with the exception of the properly requested body worn camera recording, the city may rely on Open Records Letter No. 2020-07163 as a previous determination and withhold or release the requested information in accordance with that ruling. The city may withhold the submitted body worn camera recording under section 552.108(a)(2) 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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jm

Ref: ID# 852654

Enc. Submitted documents

c: Requestor  
(w/o enclosures)