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ATTORNEY GENERAL OF TEXAS

October 4, 2022

Mr. Lance Vanzant
Counsel for the City of Tioga
Hayes, Berry, White & Vanzant, LLP
512 West Hickory Street, Suite 100
Denton, Texas 76201

OR2022-30607

Dear Mr. Vanzant:

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# 976098.

The City of Tioga (the "city"), which you represent, received a request for video recordings related to a specified incident. You claim some of the requested information was not properly requested pursuant to section 1701.661 of the Occupations Code. You further claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.1175, 552.130, and 552.147 of the Government Code. We have considered your arguments.

Initially, we note the present request, in part, seeks peace officers' body worn camera recordings. 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 as follows:

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). Although we understand you to argue the requested body worn camera recordings were not properly requested, we note the requestor provided the requisite information under section 1701.661(a) of the Occupations Code for the recordings at issue. Thus, as the body worn camera recordings at issue were properly requested pursuant to section 1701.661 of the Occupations Code, we will address whether they must be released under the Act.

We must address the city's obligations under the Act. Section 1701.662 of the Occupations Code provides, in relevant part, as follows:

(c) Notwithstanding Section 552.301(e), Government Code, a governmental body's submission to the attorney general of the information required by that subsection regarding a requested body worn camera recording is considered timely if made not later than the *25th business day* after the date of receipt of the written request.

See id. § 1701.662(c) (emphasis added). Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A) (D). Thus, while section 1701.662(c) overrides the time deadline of section 552.301(e), it does not override the governmental body's obligation to submit the requested information pursuant to section 552.301(e). You state the city received the present request for information on July 18, 2022. However, as of the date of this letter, you have failed to submit a copy or representative sample of the requested body worn camera recordings. Therefore, to the extent such recordings exist, we conclude the city failed to comply with the time requirements of section 1701.662(c) of the Occupations Code and the submission requirements of section 552.301(e) of the Government Code with respect to the requested body worn camera recordings.

Next, we must address the city's obligations under the Act with respect to any remaining requested information. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. As noted above, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.*

§ 552.301(e)(1)(A)-(D). In this instance, as noted above, the city received the request for information on July 18, 2022. As of the date of this letter, you have not submitted for our review written comments stating the reasons why the claimed exceptions apply or a copy or representative sample of the information requested. Consequently, we find the city failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required by section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Because the city has not submitted the requested information for our review, we have no basis for finding any of the information at issue excepted from disclosure. Thus, we have no choice but to order the requested information released pursuant to section 552.302 of the Government Code. If you believe the information may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 976098

c: Requestor