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ATTORNEY GENERAL OF TEXAS

August 30, 2016

Mr. Todd Fitts  
Counsel for the City of Marshall  
Todd E. Fitts Attorney at Law  
110 West Fannin Street  
Marshall, Texas 75670

OR2016-19622

Dear Mr. Fitts:

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# 624958.

The City of Marshall (the "city"), which you represent, received three requests from two different requestors for video recordings involving a named city official. You claim the submitted information is subject to section 552.101 of the Government Code. We have considered the raised argument and reviewed the submitted information. We have also received and considered comments from counsel for the second requestor. *See* Gov't Code § 552.304 (providing that 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. This section encompasses information made confidential by other statutes. We note the submitted information consists of recordings from body worn cameras. 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 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). In this instance, the second requestor does not provide the requisite information under section 1701.661(a) for her request. As the body worn camera recordings at issue were not properly requested by the second requestor pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information as to the second requestor and it need not be released to her. 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 first requestor provides the requisite information for the body worn camera recordings at issue. We note section 1701.661(h) of the Occupations Code provides, “[a] recording is confidential and excepted from the requirements of [the Act], if the recording: (1) was not required to be made under this subchapter or another law or under a policy adopted by the appropriate law enforcement agency; and (2) does not relate to a law enforcement purpose” *See id.* § 1701.661(h). You indicate, and provide documentation reflecting, some of the submitted recordings were not required to be made by law or the policies of the city’s police department. Additionally, we note the recordings at issue do not relate to a law enforcement purpose. *See id.* Accordingly, the information we have indicated is confidential under section 1701.661(h) of the Occupations Code. Thus, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(h) of the Occupations Code.

However, the submitted documentation reflects the remaining body worn camera recordings were required to be made by law or the policies of the city’s police department and the information at issue reflects the recordings relate to a law enforcement purpose. *See id.* Further, although you state the recordings “have not been and will not be used [as evidence] in a criminal prosecution,” we have no indication they could not be used as evidence in a criminal prosecution. *See id.* § 1701.661(d) (stating information “that is or could be used as evidence in a criminal prosecution is subject to the requirements of [the Act.]”). Additionally, we have no indication the recordings document an incident that involves the use of deadly force by an officer or relates to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). We note, however, section 1701.661(f) provides, in relevant part:

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

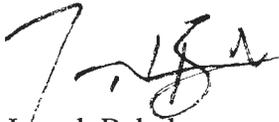
recording or, if the person is deceased, from the person's authorized representative.

*Id.* § 1701.661(f). Upon review, we find the remaining information consists of body worn camera recordings involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. The city does not indicate it has permission for release from the subject of the recordings at issue. *See id.* Accordingly, we find the city must withhold the remaining information, which we have indicated, under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations 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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 624658

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)