



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 20, 2016

Ms. Kristie L. Lewis
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2016-13919

Dear Mr. Monk:

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# 614701 (OR No. 16-2330).

The Houston Police Department (the "department") received a request for any dash camera or body camera video recordings pertaining to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101 through 552.153 of the Government Code. We have considered the exceptions you claim.

Initially, we note the requestor, in part, seeks 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:

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 requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings pursuant to chapter 1701, to the extent they exist, our ruling does not reach this information and it need not be released.¹ However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (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).

Next, we must address the department’s obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. 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. Gov’t Code § 552.301(e). You state the department received the request for information on March 29, 2016. As of the date of this letter, you have not submitted for our review written comments stating the reasons why the stated exceptions apply or a copy or representative sample of the remaining information requested. Accordingly, we find the department failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the department failed to comply with the procedural requirements of the Act, the department has waived all of its discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the department also raises mandatory exceptions to

¹As we are able to make this determination, we need not address the arguments against disclosure of this information.

disclosure, because you have not submitted the remaining requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the remaining requested information released pursuant to section 552.302. If you believe the information is confidential and 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 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/bw

Ref: ID# 614701

Enc. Submitted documents

c: Requestor
(w/o enclosures)