

SEP 08 2017

OPINION COMMITTEE



FAITH JOHNSON
CRIMINAL DISTRICT ATTORNEY
DALLAS COUNTY, TEXAS

FILE # M2-48199-17
ID. # 48199

RQ-0177-KP

September 8, 2017

Attorney General Ken Paxton
Opinion Committee

RE: Request for an Attorney General Opinion of Texas Occupations Code, Sec. 1701.655

Honorable Attorney General Paxton, and the Opinion Committee:

The Criminal District Attorney of Dallas County, Texas, pursuant to the Constitution of the State of Texas, and sections 402.042 and 402.043 of the Texas Government Code, request an Attorney General Opinion concerning Texas Occupations Code, Sec. 1701.655. The Criminal District Attorney of Dallas County is authorized to request (an "authorized requestor") this opinion, pursuant to the same section of the Texas Government Code. As authorized by section 402.042(c), this request for an opinion is sent by electronic email, as provided for below.

Texas Occupations Code, Sec. 1701.655 provides in pertinent part:

BODY WORN CAMERA POLICY. (a) A law enforcement agency that receives a grant to provide body worn cameras to its peace officers or that otherwise operates a body worn camera program shall adopt a policy for the use of body worn cameras.
(b) A policy described by Subsection (a) must ensure that a body worn camera is activated only for a law enforcement purpose and must include: (5) provisions entitling an officer to access any recording of an incident involving the officer before the officer is required to make a statement about the incident

Our question is whether this section mandates that an officer be entitled to view every officer's body worn camera of an incident or just that individual officer's body worn camera of the incident.

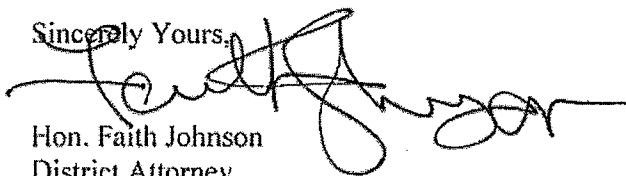
Background: The Public Integrity Division of the Dallas County District Attorney's Office investigates all officer involved shooting (OIS) incidents. This includes reviewing body worn camera (BWC) recordings of OIS incidents and reviewing officer statements of OIS incidents. Most local law enforcement agencies have adopted a policy that permits the officers involved (by involved I mean it was an officer who shot his/her firearm at an individual) in an OIS to watch their individual BWCs before giving an administrative or criminal investigation statement. Other agencies have read 1701.655(b)(5) to entitle the officer giving a statement, both involved and witness officers, to watch their own individual BWC and additionally the BWCs of any other officer(s) present at some point during the "incident". The investigatory dilemma presented is this: Uninvolved witness officers who may not have even seen the threat precipitating an OIS from their position outside a room or around a corner are exposed to a myriad of images and events that they did not even perceive prior to giving

any administrative or criminal statement involving the OIS. Likewise, an involved officer is exposed to the perspectives and images that he/she may not and could not have perceived from where he was at the time of the incident prior to giving any administrative or criminal statement.

This practice has caused some concern in that exposure to images and sound the reporting officer did not experience can result in, or at least the claim of, embellishment of individual statements based not on what the reporting officer actually experienced but on matters that others experienced.

Our Office has endorsed and fully supports the entitlement of allowing officers to review their BWC before making any statement as a legitimate and fair memory enhancement tool. This practice is also supported by scientific studies and practices. We are unaware however how the reporting officer's memory is enhanced by exposure to perspectives and details he/she would not have had, and for this reason we have not historically supported a witness being exposed to other witness experiences prior to giving a statement. Our concern is that this practice, if mandated, may actually detract from the officer's credibility when testifying. That possible result seems contrary to the purpose intended of enhancing memory to ensure a reliable and complete statement. For that reason, we seek an opinion on the statute clarifying the scope of the entitlement mandated.

Sincerely Yours,



Hon. Faith Johnson
District Attorney
Dallas County, Texas