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Body Worn Camera Recordings

Proper Requests, Deadlines, and Exceptions to Disclosure

Open Records Division



What We Will Cover

- Requirements for a proper request
- Deadlines
- Exceptions to Disclosure
- Representative Samples & Costs



Proper Body Worn Camera Request

Occupations Code § 1701.661(a)



Body Worn Camera Recording Defined

“Body worn camera” means a recording device that is:

- (A) capable of recording, or transmitting to be recorded remotely, video or audio; and
- (B) worn on the person of a peace officer, which includes being attached to the officer's clothing or worn as glasses.

Occ. Code § 1701.651

Note: Body worn camera audio captured on a dash camera recording is considered a body worn camera recording. *See generally King v. Paxton*, 576 S.W.3d 881 (Tex. App.—Austin 2019, pet. denied)



Elements of a Proper Body Camera Request

- The request for information must state:
 - Date and approximate time of recording
 - Specific location where recording occurred
 - Name of at least one person who is a subject of the recording
 - A police officer is not a subject of the recording.

NOTE: All elements must be present to be a proper request for body camera video. If the requestor fails to include the required information, the requestor may ask for the same information again. Occ. Code § 1701.661(a), (b).



Proper Request (Example 1 of 4)

Request for:

All information pertaining to case number 2024-1458, including any 911 audio or body camera videos.

This is not a proper body camera request – missing *date, time, location, and subject name*.

Note: This is still a proper request for public information for the non-body camera information that is responsive.



Proper Request (Example 2 of 4)

Request for:

Incident report and Officer Dennis Duffy's body camera video pertaining to a shoplifting incident at Walmart, located at 123 Main St., Austin, Texas on January 3, 2024, at about 7 p.m.

Not a proper body camera request – no subject of the recording named.

Note: This is still a proper request for public information for the non-body camera information that is responsive.



Proper Request (Example 3 of 4)

Request for:

Information pertaining to the crash I was in. (Please see attached CR-3 report.)

This is a proper body camera request if the CR-3 has the required information for the recording.



Proper Request (Example 4 of 4)

Request for:

Incident report involving my son, John Smith, in Austin, Texas at 5:30 pm on July 5, 2024. He was involved in a motor vehicle accident on Interstate Highway 35 South.

This is not a proper body camera request because the requestor does not provide a specific location.



Deadlines

- For a proper request for a body camera recording, the 552.301 of the Government Code deadlines are extended to 20 and 25 business days.
- **A governmental body must comply with the deadlines in 552.301 for any additional information that does not consist of a body worn camera recording.**

Occ. Code § 1701.662, Gov't Code § 552.301



Exceptions to Disclosure



Section 1701.661(h)

- Section 1701.661(h) of the Occupations Code
 - The recording was required to be made by law or the policies of the law enforcement entity; and
 - Relates to a law enforcement purpose – i.e. it is not purely personal.
- Does (h) apply?
 - If one or both of the above are not true, the recording is confidential under section 1701.661(h).
 - If both of the above are true, proceed to subsections 1701.661(c) and (d).



Section 1701.661(h) - Example

Officer Jack Donaghy forgets to turn off his camera and the recording captures his discussion about picking up milk from the store when his work shift is over.

This portion of the recording is confidential under Occ. Code § 1701.661(h) and must be withheld under Gov't Code § 552.101.



Sections 1701.661(c) and (d)

- Sections 1701.661(c) and (d) of the Occupations Code
 - **Could** the recording be used as evidence in a criminal prosecution?
 - No. - The recording is not subject to the Act.
 - Yes. - The recording is subject to the Act per section 1701.661(d).
- Note: If the recording could not be used as evidence in a criminal prosecution, you need to explain why.



Section 1701.660(a)

- If the recording:
 - Documents use of deadly force by a peace officer or
 - Relates to an administrative or criminal investigation of an officer
- Ask: Is the criminal or administrative investigation pending?
 - Yes. – The recording is confidential, but there is discretion to release if it would further a law enforcement purpose.
 - No. – Proceed to section 1701.661(f).



Section 1701.661(f)

- Two aspects of (f) that could apply:
 - (1) Was the recording made in a private space?
 - (2) Does the recording involve the investigation of conduct that constitutes a misdemeanor punishable by fine only that did not result in an arrest?



Section 1701.661(f): Private Space

- Was the recording in a private space?
- Yes. – Do you have written authorization from subjects of the recording to release?
 - No. – Recording is confidential under (f).
 - Yes. – Proceed to second aspect of (f).
- No. – Proceed to second aspect of (f).



Section 1701.661(f): Misdemeanor

- Does the recording involve a misdemeanor punishable by fine only that did not result in an arrest?
 - Yes. – Do you have written authorization to release the recording from subject(s) of the recording?
 - No. – Recording is confidential under (f).
 - Yes. – Proceed to section 1701.661(e).
 - No. – Proceed to section 1701.661(e).

Note: To avoid conditional rulings, please explain how the recording pertains to an investigation of a misdemeanor punishable by fine only and did not result in arrest.



Section 1701.661 Private Space (Example 1 of 2)

- Requestor: NBC News
- Request for: Information pertaining to an assault outside 123 Cheesy Drive around 9 p.m. on December 2, 2017, involving Jenna Maroney.
- Body camera shows: Officer Jack Donaghy interviewing Jenna inside of her house.

Recording is confidential under section 1701.661(f) and must be withheld under section 552.101 of the Government Code because the video consists of a recording in a private space recording with no written consent from subject of recording (Jenna).



Section 1701.661 Private Space (Example 2 of 2)

- Requestor: NBC News
- Request for: Information pertaining to an assault outside 123 Cheesy Drive around 9 p.m. on December 2, 2017, involving Jenna Maroney.
- Body camera shows: Officer Jack Donaghy interviewing Jenna in front of his police vehicle parked on the street in front of Jenna's home.

Recording is in a public place. Consider the second aspect of section 1701.661(f) - Does the recording involve a misdemeanor punishable by fine only that did not result in an arrest?



Section 1701.661(e)

- If it is a proper body camera request:
 - That relates to a law enforcement purpose.
 - That could be used as evidence in a criminal prosecution.
- (e) A law enforcement agency may:
 - (1) seek to withhold information subject to Subsection (d) in accordance with procedures provided by Section 552.301, Government Code;
 - (2) assert any exceptions to disclosure in Chapter 552, Government Code, or other law; or
 - (3) release information requested in accordance with Subsection (a) after the agency redacts any information made confidential under Chapter 552, Government Code, or other law.



Other Exceptions to Disclosure

- Commonly Raised Exceptions
 - 552.108
 - Homeland Security Act
 - 261.201 or 58.008 of the Family Code
 - 552.130
 - Common-Law Privacy



Art. 2.1396 of the Code of Criminal Procedure – Right of Access

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

- (1) the stop;
- (2) the arrest;
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or
- (4) a procedure in which a specimen of the person's blood or breath is taken.



Representative Samples & Costs



Representative Samples (1 of 2)

- If the requested records are voluminous and repetitive, a governmental body should submit representative samples of the records for our review. § 552.301(e)(1)(D)
- There is no magic formula for determining what would constitute a representative sample.
- The goal in creating a representative sample is to make sure it is truly representative of the requested records as a whole.



Representative Samples (2 of 2)

The OAG's current electronic filing system does NOT accept video uploads. Briefs that include attachments with videos must be submitted via U.S. mail, commercial carrier, or hand-delivery.

Note: If a request seeks an incident report and related video, then the incident report is representative of the video in most cases.



Section 1701.661(g): Costs

- The attorney general shall set a proposed fee to be charged to members of the public who seek to obtain a copy of a recording under this section. . . A law enforcement agency may provide a copy without charge or at a reduced charge if the agency determines that waiver or reduction of the charge is in the public interest.
- 1 T.A.C. § 70.13(b) - The charge for obtaining a copy of a body worn camera recording shall be:
 - (1) \$10.00 per recording responsive to the request for information; and
 - (2) \$1.00 per full minute of body worn camera video or audio footage responsive to the request for information, if identical information has not already been obtained by a member of the public in response to a request for information.



Questions?

OAG's Open Government Hotline

(877) OPEN TEX
(512) 478-6736

Cost Questions

OAG Cost Rules Administrator
(888) OR-COSTS
(512) 475-2497

OAG website

<http://www.texasattorneygeneral.gov>