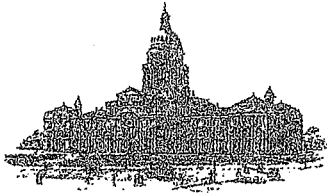


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OPINION COMMITTEE

SENATE COMMITTEE ON
INTERGOVERNMENTAL RELATIONS

September 14, 2017

RQ-0180-KP

The Honorable Ken Paxton
Attorney General of Texas
209 W. 14th Street
Austin, TX 78701

Dear General Paxton:

As chair of the Senate Committee on Intergovernmental Relations, I respectfully request a formal opinion from your office to clarify the circumstances under which a law enforcement agency is authorized or required to release, or is prohibited from releasing, certain audio or video recordings from a body worn camera made by a member of a municipal law enforcement agency. Interested parties have approached this committee with questions regarding the disclosure of these audio and visual recordings, and your opinion on the following four questions will provide valuable guidance to these parties and will assist the committee in determining the need for future legislation in this area.

1. Is a municipal law enforcement agency prohibited from complying, authorized to comply, or required to comply with a request by a member of the public to view a recording from a body worn camera if the head of the law enforcement agency determines that the recording could be used as evidence in a criminal prosecution and that allowing the person to view the recording would interfere with the detection, investigation, or prosecution of crime?

For the purposes of responding to this question, please assume that the person requesting to view the recording complies with the requirements of Section 1701.661(a), Occupations Code. In analyzing this question, please consider the application of Section 1701.661, Occupations Code, and the relevant provisions of Chapter 552, Government Code, including Section 552.108.

2. Is a municipal law enforcement agency prohibited from complying, authorized to comply, or required to comply with a request by a member of the governing body of the municipality or by a civilian employee of the municipality whose duties include supervision or oversight of the law enforcement agency (such as a city manager) to view a recording from a body worn camera if the head of the law enforcement agency determines that the recording could be used as evidence in a criminal prosecution and that allowing the person to view the recording would interfere with the detection, investigation, or prosecution of crime?

In analyzing this question, please consider the following:



A. Should a member of the governing body of the municipality or civilian manager requesting to view a body worn camera recording be considered to be a member of the public, a part of the municipal law enforcement agency, or a part of a governmental body that includes the municipal law enforcement agency for purposes of Section 1701.661, Occupations Code, and Chapter 552, Government Code? Is it relevant to the inquiry in what capacity or on what grounds the requesting official seeks access to the recording?

B. Does a member of the governing body of the municipality or civilian manager have "inherent right of access" to view a body worn camera recording when requested in the person's official capacity and for the person's performance of official duties, as discussed by Tex. Att'y Gen. Op. No. KP-0021 (2015) at 3-4 (citing Tex. Att'y Gen. Op. Nos. GA-0138 (2004) at 3, JC-0283 (2000) at 3-4, JC-0120 (1999) at 3, JM-119 (1983) at 3)?

C. If you determine that a member of the governing body of a municipality or civilian manager has an "inherent right of access" to view a body worn camera recording and that Section 552.108(a)(1), Government Code, does not limit that person's right of access, could the municipal law enforcement agency nevertheless restrict the requestor's access to the recording as necessary to prevent interference with the detection, investigation, or prosecution of crime?

3. Is a municipal law enforcement agency prohibited from complying, authorized to comply, or required to comply with a request by a member of the public to view a recording from a body worn camera if the head of the law enforcement agency determines that the recording could be used as evidence in a juvenile court proceeding or depicts or otherwise relates to a child in a manner that would restrict access to the recording?

For the purposes of responding to this question, please assume that the person requesting to view the recording complies with the requirements of Section 1701.661(a), Occupations Code. In analyzing this question, please consider the application of the relevant provisions of Title 3, Family Code, including Section 58.007.

4. Is a municipal law enforcement agency prohibited from complying, authorized to comply, or required to comply with a request by a member of the governing body of the municipality or by a civilian employee of the municipality whose duties include supervision or oversight of the law enforcement agency (such as a city manager) to view a recording from a body worn camera if the head of the law enforcement agency determines that the recording could be used as evidence in a juvenile court proceeding or depicts or otherwise relates to a child in a manner that would restrict access to the recording?

In analyzing this question, please consider the application of the relevant provisions discussed following questions 2 and 3.

Thank you in advance for your consideration of these questions. Please do not hesitate to contact me if you need any additional information regarding this request.

Sincerely,



Eddie Lucio, Jr.
Chairman, Senate Committee on Intergovernmental Relations

