



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2016

Ms. Captoria Brown
Paralegal
Office of the City Attorney
City of Carrollton
1945 East Jackson
Carrollton, Texas 75006

OR2016-17549

Dear Ms. Brown:

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# 622038 (City ID# 7631).

The Carrollton Police Department (the "department") received a request for all videos related to a specified arrest for driving while intoxicated. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Article 2.139 of the Code of Criminal Procedure, as added by House Bill 3791 by the 84th Texas Legislature,¹ provides:

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;

¹Act of May 30, 2015, 84th Leg., R.S., ch. 1124, § 1 (codified at Crim. Proc. Code art. 2.139).

(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 breath or blood is taken.

Crim. Proc. Code art. 2.139. We note the submitted information consists of video recordings made by, or at the direction, of an officer employed by the department that contain footage of the arrestee being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code, or footage of a procedure in which a specimen of the arrestee's blood was taken. Penal Code § 49.04 (person commits offense if person is intoxicated while operating motor vehicle in public place). Therefore, to the extent the requestor represents the arrestee, he is entitled to receive a copy of the video recordings at issue pursuant to article 2.139 of the Code of Criminal Procedure. Although you assert section 552.108 of the Government Code to withhold this information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.,* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.108 is a general exception under the Act, statutory access under article 2.139 prevails and the department may not withhold the video recordings at issue under section 552.108 if article 2.139 applies. However, to the extent the requestor does not represent the arrestee, he is not entitled to receive the submitted information under 2.139. In that instance, we address your remaining arguments.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). You state the submitted information relates to a pending criminal prosecution. Based upon this representation, we conclude the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information. Accordingly, the department may withhold the submitted information under section 552.108(a)(1).

In summary, to the extent the requestor represents the arrestee, he is entitled to receive a copy of the video recordings at issue pursuant to article 2.139 of the Code of Criminal Procedure.

To the extent the requestor does not represent the arrestee, the department may withhold the submitted information under section 552.108(a)(1) 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,

A handwritten signature in black ink, appearing to read "Ramsey Abarca", with a stylized flourish extending from the end.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/som

Ref: ID# 622038

Enc. Submitted documents

c: Requestor
(w/o enclosures)