



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 6, 2016

Ms. LeAnn M. Quinn  
City Secretary  
City of Cedar Park  
450 Cypress Creek Road  
Cedar Park, Texas 78613

OR2016-26969

Dear Ms. Quinn:

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# 636537 (Reference No. 16-1356).

The Cedar Park Police Department (the "department") received a request for a specified police report, including dash camera video recordings, pertaining to an incident involving the requestor. You state the department will release some information to the requestor. Additionally, you state the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes information pertaining to the analysis of an individual's blood specimen obtained by a peace officer. Section 724.018 of the Transportation Code provides that "[o]n request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018. Here,

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

the requestor is the individual who submitted the specimen. Although you claim the information at issue is excepted under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.108 of the Government Code, a specific statutory right of access to information prevails over the common-law and general exceptions to disclosure under the Act. *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *see also* Open Records Decision Nos. 613 at 4 (1993), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the department may not withhold the submitted blood specimen analysis information under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.108 of the Government Code. Accordingly, the department must release the information at issue, which we have marked, to this requestor pursuant to section 724.018 of the Transportation Code.

Next, we note some of the submitted information is subject to article 2.139 of the Code of Criminal Procedure. Article 2.139 of the Code of Criminal Procedure 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;
- (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. The submitted information includes a video recording made by or at the direction of an officer employed by the department that contains footage of the requestor being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. Penal Code § 49.04 (person commits offense if person is intoxicated while operating motor vehicle in public place). Therefore, the requestor is entitled to receive a copy of a portion of the submitted video recordings, which we have marked, pursuant to article 2.139 of the Code of Criminal Procedure. As noted above, a statutory right of access

prevails over the common-law and general exceptions to disclosure under the Act. *See Collins*, 297 S.W.3d at 415; *see also CenterPoint Energy Houston Elec. LLC*, 436 F.3d at 544. Therefore, the department may not withhold the marked video recording under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.108 of the Government Code. Accordingly, the marked video recording must be released to this requestor pursuant to article 2.139 of the Code of Criminal Procedure.

You seek to withhold the remaining information under section 552.108 of the Government Code. Section 552.108(a) 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: (1) 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 (Tex. 1977). You state, and provide documentation supporting, the submitted information relates to a case that is currently pending prosecution. Based upon this representation, we conclude the release of the information at issue 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 (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 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth or information subject to section 552.130 of the Government Code. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must release the information pertaining to the analysis of the requestor’s blood specimen we have marked to the requestor pursuant to section 724.018 of the Transportation Code. The department must release the video recording we have marked to the requestor pursuant to article 2.139 of the Code of Criminal Procedure. With the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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<sup>2</sup>We note that the requestor has a special right of access to some of the information being released in this instance. Accordingly, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/akg

Ref: ID# 636537

Enc. Submitted documents

c: Requestor  
(w/o enclosures)