



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2016

Ms. Elizabeth Lutton
Legal Advisor
Dallas County Sheriff's Department
133 North Riverfront Boulevard, LB-31
Dallas, Texas 75207-4313

OR2016-28319

Dear Ms. Lutton:

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# 638966.

The Dallas County Sheriff's Department (the "sheriff's department") received a request for information pertaining to a specified police report. You state you released some information. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to article 2.139 of the Code of Criminal Procedure, which 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. We note some of the submitted video recordings were made by or at the direction of an officer employed by the sheriff's department and contain footage of the requestor's client being stopped or arrested on suspicion of an offense under section 49.08 of the Penal Code. *See* Penal Code § 49.08 ("A person commits an offense if the person: (1) operates a motor vehicle in a public place . . . and (2) is intoxicated and by reason of that intoxication causes the death of another by accident or mistake."). Thus, the requestor 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 seek to withhold these recordings under sections 552.103 and 552.108 of the Government Code, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See* 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 sections 552.103 and 552.108 are general exceptions under the Act, the requestor's statutory right of access under article 2.139 prevails. Therefore, the recordings at issue may not be withheld under section 552.103 or section 552.108 of the Government Code. As you raise no further exceptions against disclosure of the video recordings at issue, which we have indicated, the video recordings at issue must be released.

Next, we note the remaining information includes the breath test results of an individual's blood alcohol content. 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. The requestor's client is the person who provided the specimen at the request of a peace officer. Although you claim the information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, as noted above, a specific right of access provision prevails over the Act's general exceptions to disclosure. *See* ORD 451 at 4. Therefore, the sheriff's department must release the requestor's client's intoxilyzer results, which we have marked, pursuant to section 724.018 of the Transportation 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). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue 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). The sheriff’s department states the remaining information relates to a pending criminal investigation. Based on this representation, we conclude the release of the remaining 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) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state you released, the sheriff’s department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, the sheriff’s department must release a copy of the video recordings we have indicated to this requestor pursuant to article 2.139 of the Code of Criminal Procedure. The sheriff’s department must release the requestor’s client’s intoxilyzer results pursuant to section 724.018 of the Transportation Code. With the exception of basic information, which you state you released, the sheriff’s department may withhold the remaining 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/>

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of the information at issue, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

[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 be 'MJC', written over a horizontal line.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 638966

Enc. Submitted documents

c: Requestor
(w/o enclosures)