



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2017

Mr. Adam Anderson
Assistant County Attorney
Montgomery County
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2017-09606

Dear Mr. Anderson:

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# 656245 (ORR# 17PIA101).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for audio and video recordings pertaining to two specified incidents. You claim the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note 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. We note the submitted information includes video recordings made by or at the direction of an officer employed by the sheriff's office that contain footage of the requestor's client being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. *See* Penal Code § 49.04 ("A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place."). Therefore, the requestor is entitled to receive a copy of these video recordings pursuant to article 2.139 of the Code of Criminal Procedure.

The sheriff's office raises section 552.130 of the Government Code for the video recordings at issue. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). We note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Record 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). However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the confidentiality provided under section 552.130 of the Government Code and the right of access provided under article 2.139 of the Code of Criminal Procedure. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See* Gov't Code § 311.026(b); *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar v. State*, 521 S.W.2d 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, section 552.130 generally excepts motor vehicle record information maintained in any context, while article 2.139 specifically provides access to certain video footage pertaining to certain intoxication offense arrests. Thus, we conclude the access to the video recordings at issue provided under article 2.139 is more specific than the general confidentiality provided under section 552.130. Additionally, we note article 2.139 is the later enacted statute. *See* Gov't Code § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute latest in enactment prevails). Accordingly, the sheriff's office may not withhold any portion of the video recordings at issue under section 552.130. Therefore, the video recordings we have indicated must be released pursuant to article 2.139 of the Code of Criminal Procedure.

As discussed above, section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Upon review, we note the video recording that is not subject to article 2.139 of the Code of Criminal Procedure contains confidential motor vehicle record information that is excepted from disclosure under

section 552.130. In this instance, you state the sheriff's office does not possess the technological capability to redact information from video files. Thus, we agree the sheriff's office must withhold the entirety of the submitted video recording that is not subject to article 2.139 of the Code of Criminal Procedure under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983).

In summary, the sheriff's office must release the video recordings we have indicated pursuant to article 2.139 of the Code of Criminal Procedure. The sheriff's office must withhold submitted video recording that is not subject to article 2.139 of the Code of Criminal Procedure in its entirety under section 552.130 of the Government Code.¹

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/sb

Ref: ID# 656245

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As noted above, the requestor has a right of access to some of the information being released in this instance. *See* Crim. Proc. Code art. 2.139; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, if the sheriff's office receives another request for this information from an individual other than this requestor, the sheriff's office must again seek a ruling from this office.