



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 10, 2017

Ms. Terri Bradley
Records Division
Rosenberg Police Department
2120 Fourth Street
Rosenberg, Texas 77471-5124

OR2017-10105

Dear Ms. Bradley:

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# 657424.

The Rosenberg Police Department (the "department") received a request for video recordings containing footage of a specified incident. 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.

We note some of the information you have submitted is not responsive to the request because it is not video of the specified incident. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.

Next, we note the responsive 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 the responsive information consists of a video recording made by, or at the direction, of an officer employed by the department that contains 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). We note the requestor represents the arrestee and is entitled to receive a copy of the video recording 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 recording at issue under section 552.108. The department must release the responsive information to this requestor.

You also ask this office to issue a previous determination permitting the department to withhold information subject to 552.108(a)(1) of the Government Code without first seeking a ruling from this office. *See* Gov't Code 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a ruling in this instance. However, please note this office has determined it will not issue a previous determination permitting a governmental body to withhold information subject to section 552.108(a)(1) when basic information is not at issue. *See* Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *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); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, this letter ruling is limited to the particular records 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 records 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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 657424

Enc. Submitted documents

c: Requestor
(w/o enclosures)