



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 20, 2017

Ms. Imelda B. Rodriguez  
City Secretary  
City of Eagle Pass  
100 South Monroe  
Eagle Pass, Texas 78852

OR2017-13550

Dear Ms. Rodriguez:

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# 663059 (Reference No. 2017-060).

The City of Eagle Pass (the "city") received two requests for certain information relating to 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.

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 the first requestor was stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code and the submitted video contains footage subject to article 2.139 of the Code of Criminal Procedure. *See* Penal Code § 49.04 (person commits offense if person is intoxicated while operating motor vehicle in public place). We also note the second requestor is an authorized representative of the first requestor. Therefore, both requestors are entitled to receive a copy of the submitted video recording 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, the requestors' statutory access under article 2.139 prevails and the city may not withhold the submitted video recording under section 552.108 of the Government Code.

Next, we note the remaining information contains the first requestor's fingerprints. The public availability of fingerprints is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.003 provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). As noted above, the second requestor is the authorized representative of the first requestor. Additionally, as noted above, although you raise section 552.108 for this information, a statutory right of access prevails over general exceptions to public disclosure under the Act. *See* ORDs 613 at 4, 451 at 4. Therefore, both requestors have a special right of access to the fingerprints we marked pursuant to section 560.002(1)(A) of the Government Code, and the marked fingerprints must be released to these requestors.

Next, we note the remaining information at issue includes the breath alcohol analytical report and intoxilyzer results of the first requestor. Full information concerning the analysis of the specimen must be made available upon the request of the person who has given the specimen at the request of a peace officer. *See* Transp. Code § 724.018. Here, the first requestor is the individual who submitted the specimen. Additionally, as noted above, the second requestor

is the authorized representative of the first requestor. However, as noted above, although you raise section 552.108 for this information, a statutory right of access prevails over general exceptions to public disclosure under the Act. *See* ORDs 613 at 4, 451. Therefore, the breath alcohol analytical report and intoxilyzer results, which we marked, must be released to both requestors pursuant to section 724.018 of the Transportation Code.

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). A governmental body that claims an exception to disclosure under section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to a pending criminal investigation. Based upon your representation and our review, we find section 552.108(a)(1) is applicable to the remaining information. *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).

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; *See also* 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 must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the city must release the submitted video recording pursuant to article 2.139 of the Code of Criminal Procedure. The city must release the marked fingerprints pursuant to section 560.002 of the Government Code. The city must release the breath alcohol analytical report and intoxilyzer results, which we marked, pursuant to section 724.018 of the Transportation Code. With the exception of basic information, which must be released, the city 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/>

[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 'Jahna Ward', with a large, stylized initial 'J' and a checkmark-like flourish at the end.

Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/som

Ref: ID# 663059

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)