



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 5, 2017

Mr. Jonathan T. Koury
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2017-14947

Dear Mr. Koury:

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# 664437.

The Bryan Police Department (the "department") received two requests from the same requestor for information pertaining to a specified arrest. The department states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. The department informs us the submitted information contains recordings from body worn cameras of department officers. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code states the information a requestor must provide when seeking a body worn camera recording. *See* Occ. Code § 1701.661(a). The requestor gives the requisite information under section 1701.661(a). We also understand the submitted recordings were required to be made by law or the policies of the city's police department and the recording relates to a law enforcement purpose. *See id.* § 1701.661(h). Further, we understand the recordings are or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Additionally, we have no indication the recordings document incidents that involve the use of deadly force by an officer or relate to

an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). However, section 1701.661(f) provides,

A law enforcement agency may not release any portion of a recording made in a private space . . . without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

Id. § 1701.661(f). Upon review, we find portions of the submitted video recordings were made in a private space. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). The department states it has not received permission for release of the recordings made in the private space from the subject of those recordings. However, the requestor is the subject of the recordings. *See id.* § 1701.661(f). Accordingly, the department may not withhold the recordings at issue under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

Nonetheless, we note some of the information in the recordings at issue is subject to article 2.139 of the Code of Criminal Procedure, which provides as follows:

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 requestor was stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code, and some of the submitted videos contain footage subject to article 2.139 of the Code of Criminal Procedure, which we have indicated. *See* 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 this information pursuant to article 2.139 of the Code of Criminal Procedure. Although the department asserts sections 552.103 and 552.108 to withhold the information at issue, 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 sections 552.103 and 552.108 are general exceptions under the Act, the requestor's statutory access article 2.139 prevails and the department may not withhold the information at issue on either of those grounds. Thus, the department must release the information we have indicated pursuant to article 2.139 of the Code of Criminal Procedure.

The remaining information also contains a CR-3 accident report that is subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1)). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c). The requestor is a person listed under section 550.065(c). As noted above, a statutory right of access prevails over the Act's general exceptions to public disclosure and, thus, the department may not withhold this information under section 552.103 or 552.108. *See, e.g.*, ORDs 613, 451. Therefore, the department must release the CR-3 accident report pursuant to section 550.065(c) of the Transportation Code.

The remaining information also contains the results of an analysis of a blood specimen. Section 724.018 of the Transportation Code provides, on the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. *See* Transp. Code § 724.018. The requestor is the individual who submitted the specimen at the request of a peace officer. As noted above, a statutory right of access prevails over the Act's general exceptions to public disclosure and, thus, the department may not withhold this information under section 552.103 or 552.108. *See, e.g.*, ORDs 613, 451. Therefore, the department must release the submitted blood test results pursuant to section 724.018 of the Transportation Code.

The remaining information contains a court-filed document that is subject to section 552.022(a)(17) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Sections 552.103 and 552.108 are discretionary and do not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold the information subject to section 552.022(a)(17), which we have marked, under section 552.103 or 552.108.

The department asserts the remaining information is excepted from disclosure under section 552.108(a) of the Government Code, which 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). We note the remaining information includes a DIC-24 statutory warning and a DIC-25 notice of suspension. Because the department provided copies of these forms to the arrestee, we find their release will not interfere with the detection, investigation, or prosecution of crime. Therefore, the department may not withhold the submitted DIC-24 statutory warning and DIC-25 notice of suspension under section 552.108(a)(1). The 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).

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 the DIC-24 statutory warning, the DIC-25 notice of suspension, and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

To conclude, the department must release the following: (1) the information we have indicated pursuant to article 2.139 of the Code of Criminal Procedure; (2) the submitted CR-3 accident report pursuant to section 550.065(c) of the Transportation Code; (3) the

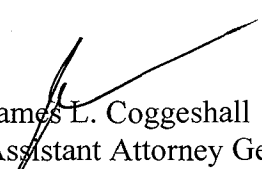
¹As our ruling is dispositive, we do not address the other arguments of the department to withhold the information at issue, except to note basic information may not be withheld from public disclosure under section 552.103. *See* Open Records Decision No. 597 at 2-3 (1991).

requestor's blood test results pursuant to section 724.018 of the Transportation Code; (4) the information we have marked under section 552.022(a)(17) of the Government Code; (5) the submitted DIC-24 statutory warning and DIC-25 notice of suspension; and (6) basic information from the remaining documents.² The 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/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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 664437

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.