



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2017

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2017-16014

Dear Ms. Quinn:

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# 666552 (Ref. No. 17-795).

The Cedar Park Police Department (the "department") received a request for a police report and video recordings pertaining to a specified incident. You state you will release some information to the requestor. You claim portions of the submitted information are 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 the submitted information includes police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661 provides:

(a) A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and

- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor did not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

You state you are releasing some of the submitted information under article 2.139 of the Code of Criminal Procedure. We note the submitted information contains additional information subject to article 2.139. Article 2.139 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. Exhibit C includes video recordings made by or at the direction of an officer employed by the department and contains footage of the requestor’s interactions with the officer after being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. 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 copies of the video recordings we indicated pursuant to article 2.139 of the Code of Criminal Procedure. Although you assert the information at issue is excepted from disclosure under section 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). We note section 552.108 is a general exception under the Act. Thus, the requestor’s statutory access under article 2.139 prevails over the department’s arguments, and

the department may not withhold any portion of the video recordings that depict the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the blood or breath of the requestor is taken under section 552.108 of the Government Code. Accordingly, the department must release the video recordings we indicated under article 2.139 of the Code of Criminal Procedure.

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 claiming section 552.108(a)(1) must explain how and why the release of the requested information 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 (Tex. 1977). You state the remaining information in Exhibit C pertains to a criminal case that is pending prosecution. Based on your representation and our review, we conclude the release of the remaining information in Exhibit C would interfere with the prosecution of crime. *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). Thus, the department may withhold the remaining information in Exhibit C under section 552.108(a)(1) of the Government Code.

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 a 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 some of the information in Exhibit B is subject to section 552.130. However, this information may belong to the requestor. Section 552.130 protects privacy interests; therefore, if the information we marked belongs to the requestor, the department may not withhold this information under section 552.130 and must release it. *See id.* § 552.023(a) (“person has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, if the information we marked does not belong to the requestor, the department must withhold it under section 552.130 of the Government Code.

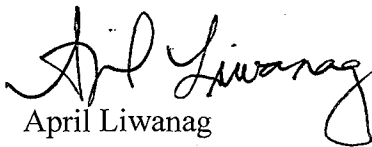
In summary, pursuant to section 1701.661 of the Occupations Code, the submitted body camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code and need not be released to the requestor in response to this request for information. The department must release the video recordings we indicated under article 2.139 of the Code of Criminal Procedure. The department may withhold the remaining information in Exhibit C under section 552.108(a)(1) of the Government Code. If the information we marked in Exhibit B does not belong to the requestor, the department

must withhold it under section 552.130 of the Government Code. The remaining information must be released.

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,



April Liwanag
Attorney
Open Records Division

AML/eb

Ref: ID# 666552

Enc. Submitted documents

c: Requestor
(w/o enclosures)