



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 25, 2017

Mr. Stephen D. Gates  
First Assistant City Attorney  
City Attorney's Office  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702

OR2017-16617

Dear Mr. Gates:

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# 667559 (Midland ID M020706-050317).

The Midland Police Department (the "department") received a request for information pertaining to the arrest of the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes department 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(a) provides:

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;

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<sup>1</sup>Although you raise section 552.117 of the Government Code, we note section 552.1175 is the proper exception to raise for information not held in an employment context.

- (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 does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings 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).

Next, we note the remaining information is subject to article 2.139 of the Code of Criminal Procedure. 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. The remaining information consists of video recordings made by or at the direction of officers employed by the department and contains footage of the requestor’s client 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 a copy of these video recordings pursuant to article 2.139. Although you assert the information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy and under sections 552.108 and 552.1175 of the Government Code, a statutory right of access prevails over the common-law and the Act’s general exceptions to public disclosure. *Collins v. Tex Mall, L.P.*, 297 S.W. 3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544

(5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *see also* 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 sections 552.108 and 552.1175 are general exceptions under the Act. Accordingly, the requestor's statutory access under article 2.139 prevails over the department's arguments and the department may not withhold the video recordings at issue under section 552.101 of the Government Code in conjunction with common-law privacy or sections 552.108 or 552.1175 of the Government Code.

You also assert section 552.130 of the Government Code for the video recordings at issue. Section 552.130 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). As previously noted, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451. 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 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, unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See 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 department may not withhold any portion of the video recordings at issue under section 552.130, and the video recordings at issue must be released pursuant to article 2.139 of the Code of Criminal Procedure.

In summary, as the requestor did not properly request the submitted body worn camera recordings pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and it need not be released. Pursuant to article 2.139 of the Code of

Criminal Procedure, the department must release the submitted dash-camera video recordings to this requestor.<sup>2</sup>

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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 667559

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As noted above, the requestor has a special right of access to the information being released in this instance. *See* Crim. Proc. Code art. 2.139. Accordingly, if the department receives another request for the same information from a different requestor, the department must again seek a ruling from this office.