



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 22, 2017

Mr. Justin Pruitt  
Assistant City Attorney  
Office of the City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2017-19078

Dear Mr. Pruitt:

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# 671908 (File Nos. 1614 and 1615).

The Lubbock Police Department (the "department") received two requests for information pertaining 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, a portion of the submitted information consists of 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;

- (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 requestors did not give the requisite information under section 1701.661(a). As the requestors 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.<sup>1</sup> 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).

We note some of 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 includes dash camera video recordings made by or at the direction of officers employed by the department and contains footage of the first 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 first requestor is entitled to receive a copy of the dash camera video recordings at issue pursuant to article 2.139. 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

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<sup>1</sup>As our ruling is dispositive, we need not address your argument against disclosure of this information.

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 first requestor's statutory access under article 2.139 prevails over the department's arguments, and the department may not withhold any portion of the dash camera video recordings that depict the stop, the arrest, the conduct of the first requestor's client under section 552.108 of the Government Code. Accordingly, the department must release the dash camera video recordings we indicated to the first requestor under article 2.139 of the Code of Criminal Procedure.

Next, we note the remaining information at issue includes the breath alcohol analytical report and intoxilyzer results of the first requestor's client. 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, as noted above, the first requestor is the authorized representative of the individual at issue. 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 must be released to the first requestor pursuant to section 724.018 of the Transportation Code.

We next note a portion of the remaining information 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. *See* 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. Transp. Code §§ 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).

In this instance, each of the requestors is a person listed under section 550.065(c). Although the department asserts section 552.108 to withhold the information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.,* ORDs 613 at 4, 451. Because section 552.108 is a general exception under the Act, the requestors' statutory access under section 550.065(c) prevails and the department may not withhold the information under section 552.108 of the Government Code. Thus, the department must release the accident report to each requestor pursuant to section 550.065(c) 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 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). The department states the remaining information relates to an active investigation or prosecution. Based on this representation, we conclude the release of the information at issue 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 (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, section 552.108(a)(1) is applicable to the remaining information.

However, we note 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 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) 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 requestors in response to the instance requests for information. The department must release the dash camera video recordings we indicated to the first requestor under article 2.139 of the Code of Criminal Procedure. The breath alcohol analytical report and intoxilyzer results must be released to the first requestor pursuant to section 724.018 of the Transportation Code. With the exception of the accident report, which must be released to each requestor pursuant to section 550.065(c) of the Transportation Code, and the basic information, 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](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 cursive script that reads "Paige Lay".

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 671908

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)