



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2017

Ms. Julie P. Doshier
Counsel for the City of Farmers Branch
Nichols Jackson Dillard Hager Smith LLP
500 North Akard, Suite 1800
Dallas, Texas 75201

OR2017-19996

Dear Ms. Doshier:

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# 673692 (Reference No. 87410).

The Farmers Branch Police Department (the "department"), which you represent, received a request for all audio and video recordings related to a specified incident. You state you released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note article 2.139 of the Code of Criminal Procedure 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;

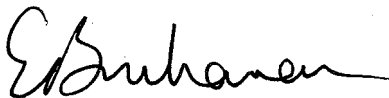
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or
- (4) a procedure in which a specimen of the person's breath or blood is taken.

Crim. Proc. Code art. 2.139. We note the submitted information consists of video recordings made by or at the direction of an officer employed by the department that contain footage of the requestor's client being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. *See* Penal Code § 49.04 ("A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place."). Therefore, the requestor is entitled to receive a copy of these video recordings pursuant to article 2.139 of the Code of Criminal Procedure. Although you assert the information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, we note a statutory right of access prevails over the common-law. *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). 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.

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,



Emily Buchanan
Attorney
Open Records Division

EB/eb

Ref: ID# 673692

Enc. Submitted documents

c: Requestor
(w/o enclosures)