



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 14, 2019

Ms. Teresa L. Presley
Records Manager
City of Frisco
7200 Stonebrook Parkway
Frisco, Texas 75034

OR2019-01025

Dear Ms. Presley:

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# 746171 (Ref No. P029780-102218).

The Frisco Police Department (the "department") received a request for body worn camera and dashboard camera recordings of a named police officer. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it is not the body worn camera and dashboard camera recordings of the named police officer. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.¹

We note portions of the remaining responsive information are subject to article 2.1396 of the Code of Criminal Procedure, which provides,

¹As we are able to make this determination, we need not address your arguments against disclosure of this information.

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 2.1396. The responsive information includes video recordings made by or at the direction of officers 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 (person commits offense if person is intoxicated while operating motor vehicle in public place). Thus, the requestor is entitled to receive these portions of the video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. Although you seek to withhold the information at issue 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). Because section 552.108 is a general exception under the Act, the requestor's statutory right of access under article 2.1396 prevails. Therefore, the department may not withhold any portion of the responsive video recordings that depicts the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the requestor's client's blood or breath is taken under section 552.108 of the Government Code.

The department also argues the responsive video recordings to which the requestor has access under article 2.1396 of the Code of Criminal Procedure contain motor vehicle record information subject to section 552.130 of the Government Code. 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, there is a conflict between the confidentiality provided under section 552.130 and the right of access provided under article 2.1396 for the video recording at issue. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear

evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *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). Although section 552.130 generally excepts motor vehicle record information maintained in any context, article 2.1396 specifically provides access to certain video footage pertaining to stops or arrests on suspected violations of sections 49.04, 49.045, 49.07, and 49.08 of the Penal Code. Therefore, we find article 2.1396 is more specific than, and prevails over, the general confidentiality provided under section 552.130. Additionally, we note article 2.1396 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). Thus, the department may not withhold any portion of the video recordings at issue under section 552.130. Accordingly, the department must release the portions of the video recordings that depict the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the blood or breath of the requestor's client is taken under article 2.1396 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[.]” *Id.* § 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 responsive information relates to a pending investigation and prosecution. Based on your representation and our review, we find release of the remaining responsive 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 (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 responsive information under section 552.108(a)(1) of the Government Code.

In summary, the department must release the portions of the responsive video recordings that depict the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the blood or breath of the requestor's client is taken under article 2.1396 of the Code of Criminal Procedure. The department may withhold the remaining responsive 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/mo

Ref: ID# 746171

Enc. Submitted documents

c: Requestor
(w/o enclosures)