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ATTORNEY GENERAL OF TEXAS

March 19, 2019

Ms. Alicia K. Kreh
Counsel for the Town of Flower Mound
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2019-07671

Dear Ms. Kreh:

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# 755457.

The Town of Flower Mound (the "town"), which you represent, received a request for video recordings related to a specified arrest of a named individual. The town claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions the town claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. The town claims section 552.101 in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.182 provides in part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any

confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The town argues some of the submitted information is confidential under section 418.182 of the Government Code. The town claims some of some of the submitted information consists of video recordings from security cameras that are located in the town's jail. Upon review, we note the submitted information consists of body worn camera video recordings and police vehicle dash camera video recordings. Thus, upon review, we conclude the town has failed to demonstrate any portion of the submitted information consists of jail security camera video recordings that fall within the scope of section 418.182(a). Accordingly, the town may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.

Next, we note article 2.1396 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. 2.1396. The submitted information consists of video recordings that were made by or at the direction of officers employed by the town and the information contains footage of the requestor's client, including the stop; the arrest; the conduct, including during the administration of a field sobriety test; and a procedure in which breath or blood was taken. *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 generally has a right of access to those portions of the information pursuant to article 2.1396 of the Code of Criminal Procedure. Although the town asserts section 552.108 to withhold this information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993), 451 (1986). Because section 552.108 is a general exception under the Act, the requestor's statutory access under article 2.1396 prevails. We also note although the town asserts the information at issue is excepted under section 552.101 of the Government Code in conjunction with

common-law privacy, a statutory right of access generally prevails over the common law. *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Road*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); Attorney General Opinion GA-0290 at 4 (2005) (noting valid rules of administrative agencies have the same “force and effect of legislation”). Therefore, the town may not withhold any portion of the video recordings under section 552.108 of the Government Code or under section 552.101 of the Government Code in conjunction with common-law privacy.

The town also asserts section 552.130 of the Government Code for portions of the video recordings. 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 find section 552.130 is not a general exception under the Act. Therefore, we must address the conflict between the confidentiality provided under section 552.130 and the right of access provided under article 2.1396 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 2.1396 specifically provides access to certain video footage pertaining to certain intoxication offense arrests. Thus, we find the access to the video recordings provided under article 2.1396 is more specific than 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). Therefore, we conclude the requestor’s access to the video recordings under article 2.1396 prevails over the confidentiality of section 552.130. Accordingly, the town may not withhold the portions of the video recordings at issue under section 552.130 of the Government Code. Therefore, the town must release the portions of the video recordings that depict the requestor’s client, including the stop; the arrest; the conduct, including during the administration of a field sobriety test; and a procedure in which breath or blood was taken to this requestor pursuant to article 2.1396 of the Code of Criminal Procedure.¹ However, we will consider the town’s remaining arguments against disclosure of any remaining portions of the video recordings at issue.

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

¹We note the requestor has a right of access to the information being released. *See* Crim. Proc. Code art. 2.1396. Thus, the town must again seek a decision from this office if it receives another request for the same information from another requestor.

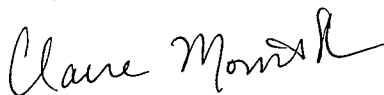
prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The town states the submitted information relates to a pending criminal investigation or prosecution. Based on this representation, we conclude release of the information will 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). Accordingly, we find the town may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, pursuant to article 2.1396 of the Code of Criminal Procedure, the town must release to this requestor the portions of the video recordings that depict the requestor’s client, including the stop; the arrest; the conduct, including during the administration of a field sobriety test; and a procedure in which breath or blood was taken. The town 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, 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 755457

Enc. Submitted documents

c: Requestor
(w/o enclosures)