



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 14, 2019

Ms. Debra A. Smith
Custodian of Police Records
Jersey Village Police Department
16401 Lakeview Drive
Jersey Village, Texas 77040

OR2019-12946

Dear Ms. Smith:

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# 765419 (PD PIR 76).

The Jersey Village Police Department (the "department") received a request for all records pertaining to the requestor, including a specified case. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it does not consist of records pertaining to the requestor or the specified case. This ruling does not address the public availability of the non-responsive information, which we marked, and the department need not release it in response to this request.¹

Next, we note a portion of the submitted responsive information is subject to article 2.1396 of the Code of Criminal Procedure. Article 2.1396 provides the following:

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

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

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. Some of the submitted responsive information consists of video recordings made by or at the direction of officers employed by the department that contain footage of the requestor being stopped or arrested or the conduct of the requestor, or a procedure in which a specimen of the requestor's blood or breath is taken 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 copies of these portions of the video recordings pursuant to article 2.1396. Although you assert section 552.108 of the Government Code 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) (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 access under article 2.1396 prevails and the department may not withhold the portions of video recordings at issue under section 552.108. Accordingly, the department must release those portions of the video recordings that depict the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the requestor's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure.

Next, we note the remaining responsive information includes a search warrant subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record[,] unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold the information subject to section 552.022(a)(17) under section 552.108 of the Government Code. As you raise no further exceptions to disclosure of this information, the department must release the submitted court-filed document we marked pursuant to section 552.022(a)(17) of the Government Code.

Next, we note the remaining responsive information includes the blood test results of the requestor's blood alcohol content. Section 724.018 of the Transportation Code provides that "[o]n request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018. Here, the requestor is the individual who submitted the specimen. Although you claim the information is excepted from disclosure under section 552.108 of the Government Code, a specific right of access provision prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. Accordingly, the department must release the requestor's blood test results, which we marked, pursuant to section 724.018 of the Transportation Code.

Section 552.108(a) 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: (1) 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). You state the remaining responsive information relates to an ongoing criminal investigation and pending prosecution. We note, however, the information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The department provided copies of these forms to the arrestee. You have not explained how releasing this information, which was already seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the DIC-24 and DIC-25 forms may not be withheld under section 552.108. However, based upon your representations, we conclude the release of the remaining responsive 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).

However, 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). Accordingly, with the exception of the DIC-24 and DIC-25 forms and the basic information, the department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

In summary, the department must release those portions of the video recordings that depict the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the requestor's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure. The department must release the submitted court-filed document we marked pursuant to section 552.022(a)(17) of the Government Code. The department must release the requestor's blood test results we marked pursuant to section 724.018 of the Transportation Code. With the exception of the DIC-24 and DIC-25 forms and the basic

information, which must be released, the department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.²

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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

Ref: ID# 765419

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information being released. See Gov't Code §§ 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves); Crim. Proc. Code art. 2.1396; Transp. Code § 724.018. Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.