



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 28, 2019

Ms. Stacie S. White
Counsel for Town of Flower Mound
Taylor, Olson, Adkins, Sralla, Elam, L. L. P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2019-14075

Dear Ms. White:

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# 767487.

The Flower Mound Police Department (the "department"), which you represent, received two requests from the same requestor for information pertaining to the requestor's arrest. You claim some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

We note, and you acknowledge, the submitted information includes police officer's 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 provides, in relevant part, the following:

(a) 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 requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and they need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (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).

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 remaining information includes video recordings made by or at the direction of an officer employed by the department of the requestor 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 2.1396 of the Code of Criminal Procedure. Although

you assert sections 552.108 and 552.117 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 sections 552.108 and 552.117 are general exceptions under the Act, the requestor's statutory access under article 2.1396 prevails and the department may not withhold the information at issue under section 552.108 or section 552.117.

The department also raises section 552.130 of the Government Code for the information subject to article 2.1396. Section 552.130 of the Government Code 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 noted above, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORD Nos. 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, we must address the conflict between the confidentiality provided under section 552.130 of the Government Code 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. *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). 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 conclude the access to the portions of 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). Accordingly, the department may not withhold any portion of the information at issue under section 552.130. Therefore, the department must release those portions of the video recordings we have indicated 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.

Next, we note the remaining information contains court-filed documents subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the 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[.]" *Id.* § 552.022(a)(17). Although you assert the submitted court-filed documents are excepted from disclosure under section 552.108 of the Government Code, this section is discretionary and does not make

information confidential under the Act. *See* Open Records Decision No. 177 at 3 (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), which we have marked, under section 552.108 of the Government 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 pertains to an active criminal investigation or prosecution. Based on this representation, we conclude section 552.108(a)(1) is generally applicable to the remaining information. *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). We note, however, the information at issue includes a DIC-24 statutory warning. The department provided a copy of this form to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the DIC-24 form may not be withheld under section 552.108(a)(1).

Additionally, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 the DIC-24 form and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, as the body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and they need not be released. Pursuant to article 2.1396 of the Code of Criminal Procedure, department must release those portions of the video recordings we have indicated 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. With the exception of the marked information subject to section 552.022(a)(17) of the Government Code, the DIC-24 form, and basic information,

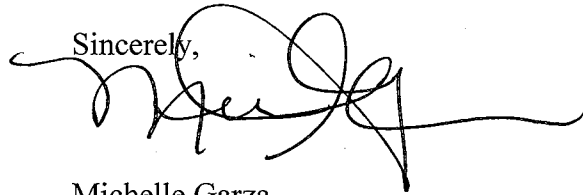
¹As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

which must be released, 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, 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 black ink, appearing to read 'Michelle Garza', with a long horizontal flourish extending to the right.

Michelle Garza
Assistant Attorney General
Open Records Division

MG/gw

Ref: ID# 767487

Enc. Submitted documents

c: Requestor
(w/o enclosures)