



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 16, 2019

Lt. Mitchell R. Selman
Collin County Sheriff's Office
4300 Community Avenue
McKinney, Texas 75071

OR2019-19270

Dear Lt. Selman:

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# 775575.

The Collin County Sheriff's Office (the "sheriff's office") received a request for video recordings pertaining to a specified incident involving the requestor's client. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. You also state you notified the Collin County District Attorney's Office (the "district attorney's office") and its right to submit arguments to this office. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have received comments submitted on behalf the district attorney's office. We have considered the submitted arguments and reviewed the submitted information.

We note some of the submitted information is subject to article 2.1396 of the Code of Criminal Procedure. Article 2.1396 provides as follows:

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 made by or at the direction of officers employed by the sheriff's office and portions of the videos contain footage of the requestor's client being stopped or arrested, the conduct of the requestor's client, or a procedure in which a specimen of the client'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 and the district attorney's office assert sections 552.103 and 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 sections 552.103 and 552.108 are general exceptions under the Act, the requestor's statutory access under article 2.1396 prevails and the sheriff's office may not withhold the portions of video recordings at issue under section 552.103 or section 552.108. Accordingly, the sheriff's office must release those 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 client's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure.

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). Generally, 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 information relates to an ongoing criminal investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the remaining 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, section 552.108(a)(1) is applicable to the remaining information, and the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, the sheriff's office must release those 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 client's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure. The sheriff's office 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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/mo

Ref: ID# 775575

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address the argument of the district attorney's office against disclosure of this information except to note basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).