



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 19, 2019

Lieutenant William Ryan
Pharr Police Department
1900 South Cage
Pharr, Texas 78577

OR2019-19780

Dear Lieutenant Ryan:

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# 776060 (Ref. No. P000800-043019).

The City of Pharr (the "city") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted on behalf of the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note a portion of the submitted 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 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 information consists of video recordings made by or at the direction of officers employed by the city's police department (the "department") that 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 requestor's 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 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 city may not withhold the portions of video recordings at issue under section 552.108. Accordingly, the city 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 information includes court-filed documents that are 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 city 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 city must release the submitted court-filed documents, which we have marked, pursuant to section 552.022(a)(17) of the Government 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 information relates to an ongoing criminal investigation. 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 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 basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

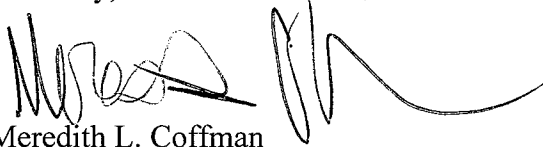
In summary, the city must release those portions of the video recordings that depict the stop, arrest, conduct of the requestor’s client or a procedure in which a specimen of the requestor’s client’s blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure. The city must release the submitted court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of the DIC-24 and DIC-25 forms and basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

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.

¹We 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 city must again seek a decision from this office if it receives another request for the same information from another requestor.

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 'Meredith L. Coffman', with a long, sweeping underline.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/jxd

Ref: ID# 776060

Enc. Submitted documents

c: Requestor
(w/o enclosures)