



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 15, 2019

Mr. Jeffrey C. Monk, DBA
HPD Administration Manager
Houston Police Department
1200 Travis, 10TH Floor
Houston, Texas 77002-6000

OR2019-32288

Dear Mr. Monk:

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# 797119 (Ref. No. 19-08895).

The Houston Police Department (the "department") received a request for body worn camera and dash camera video recordings pertaining to a specified incident. You state you do not have dash camera video recordings responsive to this request.¹ 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 representative sample of information.²

Article 2.1396 of the Code of Criminal Procedure provides:

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 a video recording made by or at the direction of an officer employed by the department and contains footage of the conduct of an individual during an interaction with the officer after being arrested on suspicion of an offense under section 49.04 of the Penal Code. *See* Penal Code § 49.04 (person commits offense if person is intoxicated while operating motor vehicle in public place). Therefore, to the extent the requestor represents the individual at issue, he is entitled to receive a copy of those portions of this information pursuant to article 2.1396 of the Code of Criminal Procedure. 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 statutory right of access under article 2.1396 prevails. Therefore, the department may not withhold any portion of the remaining video recordings that depicts the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the requestor's client's blood or breath is taken under section 552.108 of the Government Code and must instead release this information to the requestor. However, to the extent the requestor does not represent the individual at issue, he is not entitled to receive the portions of the submitted video recording under 2.1396. In that instance, we address your argument against disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on

this representation, we agree section 552.108(a)(2) is applicable to the submitted information. Accordingly, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

In summary, to the extent the requestor represents the individual at issue, the department 1) must release any portion of the submitted video recording that depicts the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the requestor's client's blood or breath is taken under section 552.108 of the Government Code and 2) may withhold the remaining information under section 552.108(a)(2) of the Government Code. To the extent the requestor does not represent the individual at issue, the department may withhold the submitted information under section 552.108(a)(2) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/mo

Ref: ID# 797119

Enc. Submitted documents

c: Requestor
(w/o enclosures)