



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 12, 2020

Ms. Marisa C. Martinez
Open Records Specialist
City of Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2020-07842

Dear Ms. Martinez:

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# 816156 (Ref. No P003881).

The Richardson Police Department (the "department") received a request for information pertaining to a specified incident regarding the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information includes police officers' 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(a) provides:

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;

¹ We assume 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 those records contain substantially different types of information than that submitted to this office

- (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). We note the requestor provided the requisite information under section 1701.661(a) for some of the body worn camera recordings at issue. As these body worn camera recordings were properly requested pursuant to chapter 1701 of the Occupations Code, we will address your arguments against their disclosure. However, the requestor did not give the requisite information under section 1701.661(a) for the remaining portion of the body worn camera recordings at issue. As the requestor did not properly request the remaining portion of the body worn camera recordings pursuant to chapter 1701, which we indicated, our ruling does not reach this information, and it need not be released to the requestor.² However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (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).

We note portions of the remaining information are subject to article 2.1396 of the Code of Criminal Procedure, which 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 officers employed by the department that contain footage 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 (person commits offense if person is intoxicated while operating motor vehicle in public place). Thus, the requestor is entitled to receive these portions of the video recordings pursuant to article 2.1396 of the Code of Criminal

² As we are able to make this determination, we need not address your arguments against disclosure of this information.

Procedure. Although you seek to withhold the information at issue under section 552.108 of the Government Code, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See* 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 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 blood or breath is taken under section 552.108 of the Government Code. Accordingly, the department must release the portions of the remaining video recordings that depict the stop, the arrest, the conduct of the requestor or a procedure in which a specimen of the blood or breath of the requestor is taken under article 2.1396 of the Code of Criminal Procedure. However, we will consider your arguments against disclosure of the remaining portions of the video recordings at issue.

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 this exception is applicable to the information at issue. *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 a pending criminal investigation or prosecution. Based on this representation, we conclude release of the information at issue will 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). Accordingly, we find the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

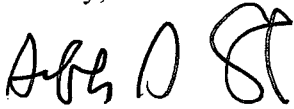
In summary, as the requestor did not properly request a portion of the body worn camera recordings pursuant to chapter 1701, which we indicated, our ruling does not reach this information, and it need not be released. The department must release the portions of the remaining video recordings that depict the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the blood or breath of the requestor is taken under article 2.1396 of the Code of Criminal Procedure. 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.

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read "Deborah Southerland". The signature is stylized and cursive.

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/be

Ref: ID# 816156

Enc. Submitted documents

c: Requestor
(w/o enclosures)