



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 2, 2020

Ms. Cristina Doss
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2020-10166

Dear Ms. Doss:

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# 819701 (DART ORR# W004694-011320).

Dallas Area Rapid Transit ("DART") received a request for video recordings related 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.

Initially, we note the requestor only seeks video recordings pertaining to the specified incident. Accordingly, the incident report you have submitted is not responsive to this request because it does not consist of the requested video recordings. This ruling does not address the public availability of any information that is not responsive to the request and DART is not required to release such information in response to this request.

We note portions of the responsive 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 responsive information includes video recordings made by or at the direction of peace officers employed by DART that contain footage of the requestor's client 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 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, DART may not withhold any portion of the submitted video recordings that depicts the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the blood or breath of the requestor's client is taken under section 552.108 of the Government Code. Accordingly, DART must release the portions of the submitted video recordings that depict the stop, the arrest, the conduct of the requestor's client or a procedure in which a specimen of the blood or breath of the requestor's client is taken under article 2.1396 of the Code of Criminal Procedure. However, we will consider your argument 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 being conducted by DART's police department. 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 DART may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

In summary, DART must release the portions of the submitted video recordings that depict the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the blood or breath of the requestor's client is taken under article 2.1396 of the Code of Criminal Procedure. DART may withhold the remaining responsive 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 <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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/gw

Ref: ID# 819701

Enc. Submitted documents

c: Requestor
(w/o enclosures)