



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 6, 2020

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6000 Western Place, Suite 200  
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OR2020-10352

Dear Ms. Kreh:

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# 820940.

The Weatherford Police Department (the "department"), which you represent, received a request for video recordings pertaining to a specified incident involving the requestor's client. You claim the requestor did not properly request some of the submitted information pursuant to section 1701.661 of the Occupations Code. Additionally, you claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information includes department 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 provides, in relevant part, the following:

(a) 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;
- (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). In this instance, we agree the requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (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).

Next, we note, and you acknowledge, 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 consists of video recordings that were made by or at the direction of officers employed by the department and 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 (“A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.”). Therefore, the requestor generally has a right of access to those portions of the information pursuant to article 2.1396 of the Code of Criminal Procedure. Although you assert section 552.108 to withhold portions of 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), 451 (1986). Because section 552.108 is a general exception under the Act, the requestor’s statutory access under article 2.1396 prevails, and the department may not withhold the portions of the video recordings at issue under section 552.108 of the Government Code. Accordingly, the department 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 requestor’s client’s blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure.

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 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). The department states the remaining information it indicated pertains to an active criminal investigation or prosecution. Based on this representation and our review, we conclude the release of the 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). Thus, section 552.108(a)(1) is applicable to the information at issue. Accordingly, the department may withhold the remaining information it indicated under section 552.108(a)(1) of the Government Code.

In summary, pursuant to section 1701.661 of the Occupations Code, our ruling does not reach the body worn camera recordings at issue and they need not be released. The department 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 requestor’s client’s blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure. The department may withhold the remaining information it indicated 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,

Gerald Arismendez  
Assistant Attorney General  
Open Records Division

GAA/jxd

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)