



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 9, 2020

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

OR2020-10617

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# 822265 (File Number P004173).

The Richardson Police Department (the "department") received a request for dash camera video recordings pertaining to a specified incident involving 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 is subject to article 2.1396 of the Code of Criminal Procedure. Article 2.1396 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

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 that those records contain substantially different types of information than that submitted to this office.

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 includes a video recording made by or at the direction of an officer employed by the department that contains 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 recording pursuant to article 2.1396 of the Code of Criminal Procedure. Although the department seeks to withhold this information under sections 552.103 and 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). Accordingly, the statutory right of access under article 2.1396 prevails. As you raise no other exceptions against disclosure of the video recording at issue, the department 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 blood or breath of the requestor 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). You state the remaining information pertains to a pending criminal investigation and prosecution. Based upon this representation, 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). Accordingly, we find the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

In summary, the department must release any portion of the video recording that depicts 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 pursuant to 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.

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,

Kimbell Kesling
Attorney
Open Records Division

KK/gw

Ref: ID# 822265

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.