



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 19, 2020

Ms. P. Armstrong
Assistant City Attorneys
City of Dallas
1400 South Lamar, 6th Floor 6W
Dallas, Texas 75215

OR2020-14002

Dear Ms. Diaz & Ms. Armstrong:

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# 828947 (ORR D006214-022820, D006398-030320).

The Dallas Police Department (the "department") received two requests for information related to a specified motor vehicle accident. You state you have released some information, including the accident report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c) (providing for release of accident report to person or entity listed under this subsection). You claim some of 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.¹

Initially, we note the submitted information includes the incident report pertaining to the specified arrest. The first requestor seeks only video recordings of the incident. The second requestor seeks the accident report, which you state you have released, and photographs pertaining to the accident. Thus, the incident report does not consist of the information requested and is not responsive to the present requests for information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the requests.

¹We 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.

We note portions of the video recordings 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 submitted information includes video recordings made by or at the direction of officers employed by the department that contain footage of the first 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 first 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 of the Government Code is a general exception under the Act, the first requestor's statutory right of access under article 2.1396 prevails. Accordingly, the department may not withhold any portion of the submitted video recordings that depicts the stop, the arrest, the conduct of the first requestor, or a procedure in which a specimen of the blood or breath of the first requestor is taken under section 552.108 of the Government Code. Therefore, the department must release to the first requestor the portions of the submitted video recordings that depict the stop, the arrest, the conduct of the first requestor or a procedure in which a specimen of the blood or breath of the first requestor 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 as well as the remaining responsive information.

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 at issue 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). Therefore, the department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

In summary, the department must release to the first requestor the portions of the video recordings that depict the stop, the arrest, the conduct of the first requestor, or a procedure in which a specimen of the blood or breath of the first requestor is taken under article 2.1396 of the Code of Criminal Procedure. The department 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.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mo

Ref: ID# 828947

Enc. Submitted documents

c: 2 Requestor
(w/o enclosures)