



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2020

Ms. Puja Boinpally
City Attorney
City of Fort Stockton
P.O. Box 1000
Fort Stockton, Texas 79735

OR2020-16554

Dear Ms. Boinpally:

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# 833553 (2020PD-012).

The Fort Stockton Police Department (the "department") received a request for all audio and video recordings pertaining to a specified incident involving the requestor's client. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor seeks only audio and video recordings pertaining to the specified incident. Thus, the submitted photographs are not responsive to the request, and the city need not release them in response to this request.

Next, we note some of the remaining 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 enforcement agency employing the peace officer who made the stop or arrest

¹ Although you also raise section 552.101 of the Government Code, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume the department no longer asserts this exception. See Gov't Code §§ 552.301, .302.

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 made by or at the direction of an officer employed by the department 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 the department seeks to withhold this information 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). Accordingly, the statutory right of access under article 2.1396 prevails. As you raise no other exceptions against disclosure of the video recordings at issue, the department must release any portion 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 pursuant to article 2.1396 of the Code of Criminal Procedure.

Section 552.108(a) of the Government Code excepts from disclosure "[information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, 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 portions of the video recordings relate to a pending criminal investigation and prosecution. Based upon this representation, we conclude the release of the remaining information 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, the department may withhold the remaining portions of the video recordings under section 552.108(a)(1) of the Government Code.

In summary, the department must release any portion of the 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 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,

Katie Stallcup
Attorney
Open Records Division

AKS/be

Ref: ID# 833553

Enc. Submitted documents

c: Requestor
(w/o enclosures)