



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2020

Mr. Jeffrey C. Monk
Administration Manager
Houston Police Department
1200 Travis, 10th Floor
Houston, Texas 77002-6000

OR2020-20578

Dear Mr. Monk:

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# 839969 (ORU No. 20-05415).

The Houston Police Department (the "department") received a request for the full police report for a specified incident involving the requestor. 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 representative sample of information.¹

Article 2.1396 of the Code of Criminal Procedure 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;

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.

(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. We note, and you acknowledge, some of the submitted video recordings, which were made by or at the direction of officers employed by the department, consist of footage of the requestor being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code or the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test. *See* Penal Code § 49.04 (person commits offense if person is intoxicated while operating motor vehicle in public place). Therefore, the requestor is entitled to receive a copy of these video recordings pursuant to article 2.1396. Although the department asserts section 552.108 to withhold 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) (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 access under article 2.1396 prevails and the department may not withhold the portions at issue within the submitted video recordings under section 552.108 of the Government Code. As you have not raised any other exceptions to disclosure for the information at issue, the department must release to the requestor the portions 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 requestor'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: (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 information relates to an open criminal investigation or 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 Publishing 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) of the Government Code is applicable to the remaining information.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open

Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must release to the requestor the portions of the submitted video recordings that depicts the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the requestor's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure. With the exception of the basic information, which must be released, 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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/be

Ref: ID# 839969

Enc. Submitted documents

c: Requestor
(w/o enclosures)