



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2020

Mr. Juan E. Gonzalez
Counsel for the City of Weslaco
Law Office of Juan E. Gonzalez
3110 East Business Highway 83
Weslaco, Texas 78596

OR2020-29719

Dear Mr. Gonzalez:

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# 855455.

The Weslaco Police Department (the "department"), which you represent, received a request for dashboard camera video recordings from 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. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information may be 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 consists of video recordings made by or at the direction of peace officers employed by the department and may include footage of the requestor's client being stopped 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."). Thus, to the extent the information we indicated consists of footage of the requestor's client being stopped on suspicion of an offense under section 49.04 of the Penal Code, the requestor is entitled to receive copies of such footage pursuant to article 2.1396 of the Code of Criminal Procedure. In that case, although you assert this information is excepted from disclosure 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 is a general exception under the Act, the requestor's statutory right of access under 2.1396 prevails. Therefore, if requestor's client was stopped on suspicion of an offense under section 49.04 of the Penal Code, the department may not withhold the information we indicated under section 552.108 of the Government Code.

Section 552.108(a) 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."¹ 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 argue the information at issue relates to a pending criminal investigation and prosecution, and release of the information would interfere with the investigation and prosecution of the case. 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). Thus, section 552.108(a)(1) is applicable to the information at issue and the department may withhold it under section 552.108(a)(1) of the Government Code.

In summary, if requestor's client was stopped on suspicion of an offense under section 49.04 of the Penal Code, the department must release the information we indicated that depicts the stop and conduct of the requestor's client pursuant to article 2.1396 of the Code of Criminal Procedure, and may withhold the remaining information under section 552.108(a)(1) of the Government Code. If requestor's client was not stopped on suspicion

¹ Although you cite to section 552.108(a)(2) of the Government Code, we understand you to raise section 552.108(a)(1) of the Government Code based on the substance of your argument.

of an offense under section 49.04 of the Penal Code, the department may withhold the submitted information in its entirety 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/gw

Ref: ID# 855455

Enc. Submitted documents

c: Requestor
(w/o enclosures)