



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 11, 2022

Ms. Kelly Edwards  
City Secretary  
City of Sanger  
P.O. Box 1729  
Sanger, Texas 76266

OR2022-04242

Dear Ms. Edwards:

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# 930361 (Ref. No. ORR-2021-84).

The City of Sanger (the "city") received a request for video recordings pertaining to a specified arrest of the requestor's client. You claim the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note some of the submitted information is subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and

- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not provide the requisite information under section 1701.661(a). As the information at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and the city need not release the information we indicated.<sup>1</sup> *See generally King v. Paxton*, 576 S.W.3d 881 (Tex. App.—Austin 2019, pet. denied). However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” Occ. Code § 1701.661(b). Upon review, we note the remaining information does not consist of body worn camera recordings. Therefore, the remaining information is not subject to section 1701.661 of the Occupations Code, and the city may not withhold any portion of it on that basis.

Next, we note some of the remaining information is 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 remaining information consists of video recordings made by or at the direction of a peace officer employed by the city’s police department and 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 (“A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.”). Thus, the requestor is entitled to receive copies of these video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. Although you assert the information at issue is excepted from disclosure under section 552.108 of the Government Code, a statutory right

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<sup>1</sup> As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

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, the city may not withhold any portion of the video recordings at issue 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 from her under section 552.108 of the Government Code. Accordingly, the city must release those portions of the remaining video recordings at issue 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 from her 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). 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 information at issue pertains to an ongoing criminal investigation or prosecution. Based on your representations and our review, 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, the city may withhold the remaining portions of the video recordings at issue under section 552.108(a)(1) of the Government Code.

In summary, as the information we indicated was not properly requested pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the city need not release it. The city must release those portions of the remaining video recordings at issue 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 from her pursuant to article 2.1396 of the Code of Criminal Procedure. The city may withhold the remaining portions of the video recordings at issue 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/be

Ref: ID# 930361

c: Requestor