



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 3, 2022

Ms. Sara Casares
Office Specialist
The City of Edinburg
1702 South Closner Boulevard
Edinburg, TX 78539

OR2022-06341

Dear Ms. Casares:

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# 933090 (Ref. No. 152346).

The Edinburg Police Department (the "department") received a request for the police report and body worn camera recording from a specified case number involving the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted 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 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 a video recording made by or at the direction of an officer employed by the department 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 (“A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.”). Therefore, the requestor is entitled to receive a copy of the video recording pursuant to article 2.1396 of the Code of Criminal Procedure. Although you assert section 552.108 of the Government Code to withhold this information, 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 requestor's statutory access under article 2.1396 prevails over the department's arguments under section 552.108 and the department may not withhold the submitted video recording under section 552.108 of the Government Code. Therefore, the submitted video recording must be released pursuant to article 2.1396 of the Code of Criminal Procedure.

Next, we note the remaining information contains a toxicology report showing the analysis of a blood specimen. Section 724.018 of the Transportation Code provides that “[o]n request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney.” Transp. Code § 724.018. Here, the requestor is the individual who submitted the specimen. Although you claim the information is excepted from disclosure under section 552.108 of the Government Code, a specific right of access provision prevails over the Act's general exceptions to disclosure. *See* ORD 451 at 4. Therefore, the department must release the submitted toxicology report pursuant to section 724.018 of the Transportation Code.

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 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 you marked pertains to a pending criminal investigation or prosecution. We note the remaining information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. Because copies of these forms were provided to the arrestee, we find you have not demonstrated release of the DIC-24 and DIC-25 forms will interfere with the detection, investigation, or prosecution of crime. Accordingly, we

conclude the DIC-24 and DIC-25 forms may not be withheld under section 552.108(a)(1). However, based on your representation and our review, we conclude the release of the remaining 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). Therefore, with the exception of the DIC-24 and DIC-25 forms, which must be released, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code.¹

In summary, the submitted video recording must be released to the requestor pursuant to article 2.1396 of the Code of Criminal Procedure. The department must release the submitted toxicology report pursuant to section 724.018 of the Transportation Code. With the exception of the DIC-24 and DIC-25 forms, which must also be released, the department may withhold the remaining information it has marked under section 552.108(a)(1) of the Government Code. The remaining information must be released.²

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/be

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

² We note the requestor has a right of access beyond that of the general public to some of the information being released. *See* Crim. Proc. Code art. 2.139; Transp. Code § 724.018; *see also* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Accordingly, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)