



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 10, 2022

Mr. Kevin Bailey
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2022-07298

Dear Mr. Bailey:

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# 933783 (Request ID# M035713-120121).

The Midland Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor's client. You state you released some information. You claim the submitted information is excepted from disclosure under section 552.1175 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

We note the submitted 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;

¹ Although you also raise section 552.117 of the Government Code, we note section 552.1175 is the proper exception to raise for information the department holds in a law enforcement context.

(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 a peace officer employed by the department that contains footage of the conduct of the requestor's client during an interaction with the officer after being stopped and 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 video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. Although you seek to withhold the information at issue under section 552.1175 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 552.1175 is a general exception under the Act, the requestor's statutory right of access under article 2.1396 prevails. Therefore, the department may not withhold any portion of the submitted video recordings, which depict the stop, the arrest, and the conduct of the requestor's client, under section 552.1175 of the Government Code. Accordingly, the department must release the submitted video recordings to this requestor pursuant to article 2.1396 of the Code of Criminal Procedure.

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,

Pearlie Gault
Attorney
Open Records Division

PG/ba

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Enc. Submitted documents

c: Requestor
(w/o enclosures)