



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2022

Ms. Lauren Azopardi
Assistant City Attorney
The City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-19034

Dear Ms. Azopardi:

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# 956956 (Ref. No. E002405-041122).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident involving the requestor's client. The city will release some information. The city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the city claims 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. *See* Crim. Proc. Code art. 2.1396. Article 2.1396 provides as follows:

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.

Id. The submitted information includes video recordings made by or at the direction of an officer employed by the city and contains footage of the requestor's client being stopped and arrested under suspicion of an offense under section 49.04 of the Penal Code. 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 copies of portions of the remaining video recordings at issue pursuant to article 2.1396 of the Code of Criminal Procedure. Although the city asserts the information at issue 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). We note section 552.108 is a general exception under the Act. Thus, the requestor's statutory access under article 2.1396 prevails over the city's arguments, and the city may not withhold the information at issue under section 552.108 of the Government 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). The city states the information at issue pertains to a pending criminal investigation and prosecution. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *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). We note, however, the information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The DIC-24 and DIC-25 forms have previously been provided to the arrestee. Because copies of these documents have previously been released to the arrestee, we find the city has not shown release of these documents will interfere with the detection, investigation, or prosecution of crime, and these documents may not be withheld under section 552.108(a)(1). *See* Gov't Code § 552.108(a)(1). Because the remaining information has not been previously released, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) is applicable to the remaining information.

However, we note, and the city acknowledges, 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 DIC-24 and DIC-25 forms and the basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, the city must release the portions of the submitted video recordings that depict the stop, the arrest, or the conduct of the requestor's client under article 2.1396 of the Code of Criminal Procedure. With the exception of the basic information and the DIC-24 and DIC-25 forms, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

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,

Sarah E. Reese
Attorney
Open Records Division

SER/mo

Ref: ID# 956956

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ We note the requestor has a right of access beyond that of the general public to some of the information being released. See Gov't Code § 552.023(a) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself); Crim. Proc. Code art. 2.1396. Accordingly, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.