



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2022

Mr. James Kopp
Assistant City Attorney
City of San Antonio
315 South Santa Rosa, 6th Floor
San Antonio, Texas 78207

OR2022-27332

Dear Mr. Kopp:

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# 971398 (COSA File No. W453790).

The City of San Antonio (the "city") received a request for information pertaining to a specified incident. 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 portions of the submitted information are 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 blood or breath is taken.

Crim. Proc. Code art. 2.1396. Portions of the submitted information consist of video recordings made by or at the direction of officers employed by the city's police department that include footage of the requestor 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."). Therefore, the requestor is entitled to receive a copy of portions 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 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 exceptions to disclosure under the Act). Because section 552.108 is a general exception under the Act, the requestor's statutory right of access under article 2.1396 prevails. Therefore, the city must release the portions of the video recordings that depict the stop, the arrest, or the conduct of the requestor pursuant to article 2.1396 of the Code of Criminal Procedure. However, we will address your argument against disclosure of any remaining portions of the video recordings at issue.

Next, we note the remaining information includes a search warrant, order for assistance, and return that were filed with a court. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the city seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the search warrant, order for assistance, and return may not be withheld under section 552.108. Accordingly, the city must release the search warrant, order for assistance, and return pursuant to section 552.022(a)(17) of the Government Code. However, we will address your arguments against disclosure of the remaining information.

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 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 remaining information relates to a pending criminal investigation or prosecution. We note the remaining information includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The city provided a copy of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108. However, based on your representation, we find release of the

remaining information 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 remaining information.

However, 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the DIC-24, and DIC-25 forms, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, the city must release the portions of the video recordings that depict the stop, the arrest, or the conduct of the requestor pursuant to article 2.1396 of the Code of Criminal Procedure. The city must release the search warrant, order for assistance, and return pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the DIC-24, and DIC-25 forms, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/plt

¹ As we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted body worn camera recordings. *See generally* Occ. Code § 1701.661(a), (e).

² We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov’t Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987). Accordingly, if the city receives another request for this same information from a different requestor, it must again seek a ruling from this office.

Ref: ID# 971398

Enc. Submitted documents

c: Requestor
(w/o enclosures)