



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2016

Mr. Andrew Wipke
Assistant District Attorney
Wichita County Criminal District Attorney's Office
900 Seventh Street
Wichita Falls, Texas 76301-2482

OR2016-12670

Dear Mr. Wipke:

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# 612794 (Ref. No. 906).

The Wichita County Sheriff's Office (the "sheriff's office") received a request for 1) a specified officer's disciplinary record; 2) specified calibration records; and 3) the video recording, search warrant for a "blood draw," and "blood draw" results pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 not responsive to the present request because it does not pertain to any of the specified information requested by the requestor. This ruling does not address the public availability of the non-responsive information, which we have marked, and the sheriff's office need not release it in response to this request.¹

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

Next, we note the sheriff's office has only submitted the requested video recording and search warrant. To the extent information responsive to the remainder of the request existed on the date the sheriff's office received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

We note the submitted responsive information contains a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the sheriff's office seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Accordingly, the sheriff's office may not withhold the court-filed document, which we have marked, under section 552.108. As you raise no other exceptions to disclosure of the marked court-filed document, it must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will address your arguments against disclosure of the remaining information.

Article 2.139 of the Code of Criminal Procedure, as added by House Bill 3791 by the 84th Texas Legislature,² 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

²Act of May 30, 2015, 84th Leg., R.S., ch. 1124, § 1 (codified at Crim. Proc. Code art. 2.139).

(4) a procedure in which a specimen of the person's breath or blood is taken.

Crim. Proc. Code art. 2.139. We note the remaining responsive information consists of a video recording made by or at the direction of officers employed by the sheriff's office that contains footage of the requestor being stopped or arrested on 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 a copy of this video recording pursuant to article 2.139. Although the sheriff's office asserts section 552.108 to withhold this information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, 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 access under article 2.139 prevails and the sheriff's office may not withhold the video recording at issue under section 552.108 of the Government Code.

In summary, the sheriff's office must release the marked court-filed document pursuant to section 552.022 of the Government Code and the submitted video recording to the requestor pursuant to article 2.139 of the Code of Criminal Procedure.³

Finally, you request that this office issue a "previous determination" that would permit the sheriff's office to withhold information under section 552.108 of the Government Code and public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time. Accordingly, 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³We note the requestor has a right of access to some of the information being released. Thus, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 612794

Enc. Submitted documents

c: Requestor
(w/o enclosures)