



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 14, 2016

Ms. Alexis G. Allen
Counsel for the Red Oak Police Department
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

OR2016-23209

Dear Ms. Allen:

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# 630467 (Ref No. 78206).

The Red Oak Police Department (the "department"), which you represent, received two requests for specified information related to case number 16RP022211. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by a requestor. *See Gov't Code § 552.304* (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note some of the submitted information is subject to article 2.139 of the Code of Criminal Procedure. Article 2.139 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.

Crim. Proc. Code art. 2.139. We note the submitted information includes video recordings made by or at the direction of officers employed by department that contain footage of the second 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 second requestor is entitled to receive a copy of the video recordings we have indicated pursuant to article 2.139 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, 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 second requestor's statutory right of access under article 2.139 prevails and the department may not withhold the video recordings we indicated from the second requestor under section 552.108 of the Government Code.

You also raise section 552.130 of the Government Code for the video recordings we have indicated. Section 552.130 provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). As noted above, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the confidentiality provided under section 552.130 of the Government Code and the right of access provided under article 2.139 of the Code of Criminal Procedure. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See* Gov't Code § 311.026(b); *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *Cuellar v. State*, 521 S.W.2d 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, section 552.130 generally excepts motor vehicle record information maintained in any context, while article 2.139 specifically provides access to certain video footage pertaining to certain

intoxication offense arrests. Thus, we conclude the access to the video recordings we have indicated provided under article 2.139 is more specific than the general confidentiality provided under section 552.130. Additionally, we note article 2.139 is the later enacted statute. *See* Gov't Code § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute latest in enactment prevails). Accordingly, the department may not withhold any portion of the information at issue under section 552.130, and the video recordings we have indicated must be released to the second requestor pursuant to article 2.139 of the Code of Criminal Procedure. As no other exceptions to disclosure are raised for the video recordings we have indicated, the department must release them to the second requestor. However, we will consider your arguments against the disclosure of the submitted video recordings with respect to the first requestor and the remaining portion of the video recordings with respect to the second requestor. We will also consider your arguments against the disclosure of the submitted offense report with respect to both requestors.

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[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *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. Based upon this representation, we conclude the release of the submitted 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.

We note, however, section 552.108 of the Government Code 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 the types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, the department must release the video recordings we indicated to the second requestor pursuant to article 2.139 of the Code of Criminal Procedure. With the exception

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

of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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

Sincerely,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/bhf

Ref: ID# 630467

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)