



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2015

Mr. Jeffrey L. Moore
Counsel for Forney Police Department
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-25594

Dear Mr. Moore:

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# 589592.

The Forney Police Department (the "department"), which you represent, received a request for video recordings for a specified incident involving the requestor's client that occurred on May 9, 2015.¹ 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

The requestor asserts, as the attorney for the individual named in the request, he has a right of access to the submitted video recordings under article 2.139 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 2.139 (providing person stopped or arrested on suspicion of certain Penal Code offenses is entitled to receive from the law enforcement agency employing the peace officer a copy of any video made by or at the direction of the

¹The requestor asserts he did not make his request pursuant to the Act. However, we note a written communication that reasonably can be judged to be a request for public information is a request for public information under the Act. *See generally* Open Records Decision No. 44 at 2 (1974). *See also* Gov't Code § 552.301(a) (governmental body that receives written request for information that it wishes to withhold from public disclosure must ask for decision from this office). Thus, we will address whether the submitted information must be released to or withheld from the requestor pursuant to the Act.

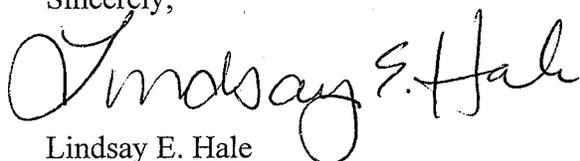
officer who made the stop or arrest that contains certain footage). However, this provision is only applicable to a recording of conduct that occurs on or after September 1, 2015. Act of May 30, 2015, 84th Leg., R.S., ch. 1124, §§ 2-3, 2015 Tex. Sess. Law Serv. 3804, 3805. The submitted video recordings pertain to conduct that occurred on May 9, 2015. Therefore, article 2.139 is not applicable to the submitted video recordings.

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 reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal investigation by the department. Based upon your representation and our review, we conclude 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 and the department may withhold the submitted information on that basis.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/eb

Ref: ID# 589592

Enc. Submitted documents

c: Requestor
(w/o enclosures)