



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2016

Mr. M. Matthew Ribitzki
Deputy City Attorney
City of Burleson
141 West Renfro
Burleson, Texas 76028

OR2016-14728

Dear Mr. Ribitzki:

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# 616247 (ORR# 669/16-0244).

The Burleson Police Department (the "department") received a request for video footage pertaining to the arrest of a named individual.¹ 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.

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:

¹Although you state you will redact information pursuant to Open Records Decision No. 684 (2009) and dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2016-08169 (2016), we note the submitted information does not contain any of the categories of information addressed by ORD 684 or any dates of birth of members of the public.

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

- (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 requestor represents the individual stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code and the submitted video contains footage subject to article 2.139 of the Code of Criminal Procedure. *See* 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 the video recording pursuant to article 2.139. Although the department 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 department may not withhold the submitted video recordings under section 552.108.

You state you will redact information subject to section 552.130 of the Government Code pursuant to section 552.130(c).³ Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. Gov't Code § 552.130(a)(1), (2). Accordingly, the motor vehicle record information in the submitted video recording is confidential under section 552.130 of the Government Code. However, we note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451. 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 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, unless the general provision was enacted later and there is clear

³We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

evidence that the legislature intended the general provision to prevail. *See 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 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 submitted video recordings under section 552.130 and the video recording must be released pursuant to article 2.139 of the Code of Criminal Procedure.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 616247

Enc. Submitted documents

c: Requestor
(w/o enclosures)