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Ms. Kelly A. Morrison
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OR2016-16486

Dear Ms. Morrison:

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# 620389 (UNT PIR Nos. 004022 & 004154).

The University of North Texas Police Department (the "department") received two requests from different requestors for all video recordings pertaining to a specified arrest of a named individual. 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 representative sample of information.¹

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note the submitted information is subject to article 2.139 of the Code of Criminal Procedure, as added by House Bill 3791 by the 84th Texas Legislature.² 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. The submitted information consists of video recordings made by or at the direction of an officer employed by the department that contains footage of the named individual 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). In this instance, the first requestor's client is the named individual and the second requestor is the named individual himself. Therefore, these requestors are entitled to receive copies of these video recordings pursuant to article 2.139. Although you assert section 552.108 to withhold the video recordings, 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 requestors' rights of statutory access under article 2.139 prevail and the department may not withhold the submitted video recordings under section 552.108 of the Government Code.

You also seek to withhold the submitted video recordings under Section 552.130 of the Government Code. 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). We note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451. However, because

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

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 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 recording at issue 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 video recordings under section 552.130. Thus, the submitted video recordings must be released pursuant to article 2.139 of the Code of Criminal Procedure.³

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/bw

³Because the requestors have a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 620389

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)