



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 15, 2008

Ms. Teresa J. Brown  
Senior Open Records Assistant  
Plano Police Department  
P. O. Box 860358  
Plano, Texas 75086-0358

OR2008-04981

Dear Ms. Brown:

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# 307314.

The Plano Police Department (the "department") received two requests from the same requestor for: (1) personnel files for two named officers and one unnamed officer; (2) a list of all citations issued by the two named officers in the past six months; (3) a specified citation issued by one of the named officers; (4) video recordings pertaining to the two named officers; (5) documents that show any racial profiling reports being prepared by the City of Plano or the department; and (6) information showing the racial composition of a specified department precinct from November 2007 through January 2008.<sup>1</sup> You state that you are making available information responsive to request for the status of racial profiling reports. You claim that the submitted personnel files, citation lists, citation, and video recordings are excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted any information in response to the request for documents showing the racial composition of a specified department precinct during a certain time period. Thus, to the extent information responsive to this aspect of the request existed on the date the request was received, we assume that you have released it to the

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<sup>1</sup>You state that portions of the original request were illegible. You state that the department contacted the requestor, who then clarified his request. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear, governmental body may ask requestor to clarify or narrow request).

requestor. If you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301(a), .302.

Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requestor is currently being prosecuted by the City of Plano for traffic violations enforced by the two named police officers. You state that the requestor has asked for the information at issue in order to assist in his own defense of these charges. You inform us, and have provided a letter from the city’s prosecuting attorney stating, that release of this information would interfere with the prosecution of the case. Based on your representations and the prosecuting attorney’s letter, we conclude that section 552.108(a)(1) is applicable in this instance. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); see also Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Accordingly, the department may withhold the information at issue under section 552.108(a)(1).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.— Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 307314

Enc. Submitted documents

c: Mr. Michael Elam  
2232 Homestead Lane  
Plano, Texas 75025  
(w/o enclosures)