



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2009

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

OR2009-15111

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# 359138.

The Plano Police Department (the "department") received a request for the name of the department's IT person, procedures regarding videos of driving while intoxicated ("DWI") arrests, and information pertaining to a named officer, including the number of DWI arrests made by this officer and computer aided dispatch data and all mobile data terminal transmissions involving the officer during a specified time period. You state that the department will provide the requestor with some of the requested information. You also state that the department has no information responsive to a portion of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.101

¹We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note that a portion of the information at issue was the subject of two previous requests for information, in response to which this office issued Open Records Letter Nos. 2009-11783 (2009) and 2009-12594 (2009). In Open Records Letter No. 2009-11783, we determined that the department may withhold the department's procedures for mobile digital recording and inventory searches of vehicles and the department's procedures regarding uploading and preserving videos of DWI arrests under section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2009-12594 we determined that the department may withhold the same information based upon the previous decision in Open Records Letter No. 2009-11783. We conclude that, as we have no indication the law, facts, and circumstances on which this prior rulings were based have changed, the department may continue to rely on these rulings as previous determinations and withhold this information in accordance with Open Records Letter Nos. 2009-11783 and 2009-12594. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the present request seeks information that was not addressed in Open Records Letter Nos. 2009-11783 and 2009-12594; therefore, we will consider your arguments against disclosure of the remaining information.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the information at issue includes administrative records. Section 552.108(a)(1) is ordinarily not applicable to internal administrative records that are not related to an investigation or prosecution of crime. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App. – El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). However, you inform us that the Collin County District Attorney's Office objects to the release of the information at issue, as it would interfere with the pending

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

criminal prosecution of a DWI case. Based on this representation and our review, we conclude that release of the information we have marked would interfere with the pending criminal prosecution. However, you have not demonstrated how any portion of the remaining information pertains to the detection, investigation, or prosecution of crime. Therefore the department may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

We note that section 552.108 does not except from disclosure basic information about an arrested person; an arrest, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes the identity of the complainant and a detailed description of the offense. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). We note that the information we have marked under section 552.108(a)(1) contains a computer-aided dispatch ("CAD") report. In Open Records Decision No. 649 (1996), this office concluded that information contained in a CAD report is substantially the same as basic information and, thus, is not excepted from public disclosure under section 552.108. See ORD 649 at 3; see also Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in police dispatch records or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*). Therefore, with the exception of the basic information contained in the CAD report, the department may withhold the information we have marked under section 552.108(a)(1) of the Government Code.³

We note that the remaining information contains information subject to section 552.130 of the Government Code.⁴ Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Therefore, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the department may continue to rely on Open Records Letter Nos. 2009-11783 and 2009-12594 and withhold the information we have marked in accordance with the previous decisions. With the exception of the basic information contained in the CAD report, the department may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The department must withhold the

³As our ruling is dispositive of this information, we need not address your remaining argument against its disclosure.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 359138

Enc. Submitted documents

c: Requestor
(w/o enclosures)