



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2010

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

OR2010-05205

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# 375645.

The Plano Police Department (the "department") received a request for five categories of information pertaining to radar guns and a named officer in connection to a specified traffic stop. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's claim that the information at issue must be released pursuant to the rules of discovery. We note that the Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See* Gov't Code §§ 552.005

¹We 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.

(the Act does not affect scope of civil discovery), .0055 (subpoena duces tecum or request for discovery issued in compliance with statute or rule of civil or criminal procedure is not considered to be request for information under the Act). In this instance, the requestor submitted to the department a request for information under the Act, rather than a subpoena duces tecum or request for discovery. Therefore, we will determine whether the information at issue may be withheld pursuant to the Act, and we do not address the requestor's arguments based on rules of discovery.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Id. § 552.108(a)(1)-(2). You appear to raise both of these provisions, which generally are applicable to mutually exclusive types of information. Section 552.108(a)(1) is applicable to information whose release would interfere with a pending criminal investigation or prosecution. Section 552.108(a)(2) is applicable only to information relating to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. 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).

You state the information at issue relates to a pending criminal investigation and prosecution. Based on your representations and our review of the information at issue, we conclude section 552.108(a)(1) is applicable to the information at issue. *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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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# 375645

Enc. Submitted documents

c: Requestor
(w/o enclosures)