



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2010

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

OR2010-10175

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# 386138.

The Plano Police Department (the "department") received a request for: 1) the name of the department's information technology person; 2) the department's policies and procedures regarding uploading and preserving video recordings of driving while intoxicated ("DWI") arrests; 3) the personnel records of a named officer; 4) the total number of DWI arrests made by the named officer; and 5) all computer-aided dispatch ("CAD") and mobile data terminal ("MDT") records involving the named officer for a specified time period. You state the department has no information responsive to item 4. You state the department has previously released information responsive to item 1 to the requestor. You claim the submitted records are 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

Initially, you inform us the requested policies and procedures regarding uploading and preserving video recordings of DWI arrests was the subject of a previous request for

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.

information, in response to which this office issued Open Records Letter No. 2009-11783 (2009). In that ruling, we concluded among other things that the requested policies and procedures may be withheld under section 552.108(a)(1) of the Government Code because their release would interfere with a pending DWI prosecution. However, you inform us the circumstances on which Open Records Letter No. 2009-11783 is based have changed as the prosecution at issue in that file is no longer pending. *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). Therefore, the department may not continue to rely on Open Records Letter No. 2009-11783 as a previous determination for the requested policies and procedures. You did not submit this information for our review, nor did you submit any arguments against the disclosure of this information. Therefore, you must release the requested policies and procedures regarding uploading and preserving video recordings of DWI arrests to the requestor at this time. *See* Gov't Code §§ 552.301, .302.

Next, we will address your argument under section 552.108 of the Government Code for the information you submitted. Section 552.108 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the personnel records attached as Exhibit D pertain to a department officer who is a witness in a pending criminal prosecution. You indicate the CAD and MDT records attached as Exhibit E pertain to the same pending criminal investigation and prosecution. You also state the Collin County District Attorney's Office has advised the release of the submitted records would interfere with its ongoing criminal prosecution. Based on your representations, we conclude the release of the submitted records would interfere with the detection, investigation, or prosecution of crime. *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 No. 474 at 4-5 (1987) (section 552.108 may be invoked by any proper custodian of information relating to pending investigation or prosecution of criminal conduct).

Section 552.108, however, 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). In Open Records Decision No. 649 (1996), this office concluded 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 reports, the department may withhold the submitted records under section 552.108(a)(1) of the Government Code.²

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 386138

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the personnel records.