



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2010

Mr. Jeffrey T. Ulmann
Knight & Partners
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2010-10540

Dear Mr. Ulmann:

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# 386818.

The City of Kyle (the "city"), which you represent, received a request for the police video from an incident that occurred on April 2, 2010, as well as the videos from a named officer's vehicle on April 25 and 26 during specified periods of time. You assert the request is not a proper request under the Act. You also claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

We begin by addressing your claim the requested information "is more properly obtained through discovery procedures" and, thus, should not be considered a request for information under the Act. Section 552.0055 of the Government Code provides "[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under [the Act]." Gov't Code § 552.0055. This section does not apply in all instances in which a governmental body could have received such a subpoena or discovery request. See *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (stating in interpreting statutes, goal of discerning legislature's intent is served by beginning with statute's plain language because it is assumed legislature tried to say what it meant and its words are, therefore, surest guide to its intent); see also *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994)). ("In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.").

You do not assert the request the city received is in fact a "subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal

procedure.” Gov’t Code § 552.0055. Nothing in the request reflects it meets the elements of a subpoena duces tecum. *See* Code Crim. Proc. arts. 24.02 (defining subpoena duces tecum), .03 (describing procedures for obtaining subpoenas, including subpoena duces tecum). Furthermore, you have not demonstrated, and the request does not indicate, the request for information constitutes a discovery request issued in compliance with a statute or a rule of civil or criminal procedure. Therefore, we find the city received a request for information under the Act. Consequently, we will consider your claimed exceptions to disclosure for the submitted information.

Next, we note you have not submitted information responsive to the part of the request seeking a police video of an incident that occurred on April 2, 2010. To the extent information responsive to that part of the request existed on the date the city received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov’t Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code, which provides in relevant part the following:

(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;

(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 a conviction or deferred adjudication[.]

Gov’t Code § 552.108(a)(1), (a)(2). The protections offered by subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) generally applies to information that pertains to pending criminal investigations or prosecutions, while section 552.108(a)(2) protects law enforcement records that pertain to closed criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

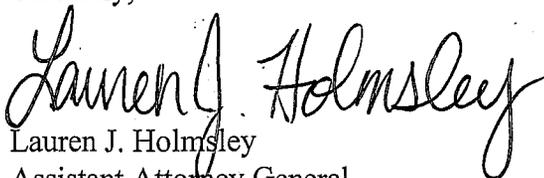
You state that the submitted information pertains to a pending criminal investigation. Accordingly, we understand you to assert section 552.108(a)(1) of the Government Code for the submitted information. Based upon your representation, we conclude the release of the submitted information would interfere 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., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Accordingly, the city may withhold the submitted videos under section 552.108(a)(1) of the Government Code.¹

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,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 386818

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.