



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 20, 2010

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

OR2010-12687

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# 391148.

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 that the department has no information responsive to item 4.<sup>1</sup> You further state that the department has previously released information responsive to item 1 to the requestor. You claim that the submitted 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 information.

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<sup>1</sup>We 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).

Initially, we note the requestor excluded from the request any information that is confidential by law. Therefore, any such information is not responsive to the instant request. The department need not release non-responsive information in response to the request, and this ruling will not address that information.

You inform us that the requested policies and procedures regarding uploading and preserving video recordings of DWI arrests were the subject of a previous request for 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 previously informed 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); Open Records Letter No. 2010-10175 (2010) (finding circumstances on which Open Records Letter No. 2009-11783 was based have changed as prosecution no longer pending). 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.

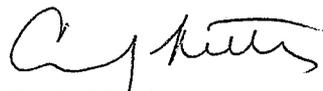
Next, we will address your argument under section 552.108 of the Government Code for the information you submitted. Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 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. 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).

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*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, which must be released, the department may withhold the submitted records under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 391148

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining claim.