



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2010

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

OR2010-16120

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# 398728 (ORR GRAD081210).

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 department employees; 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 4.¹ You further state the department has previously released information responsive to items 1 and 2 to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under the Act. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See*

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).

Gov't Code § 552.301(a), (b). In this instance, you state the department received the request for information on August 12, 2010. However, you did not raise section 552.108 as an exception to disclosure until September 2, 2010. Thus, the department failed to raise section 552.108 within the ten business day period mandated under section 552.301(b). Accordingly, we conclude the department failed to comply with section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.108 is a discretionary exception that serves only to protect a governmental body's interests, and may be waived. Thus, section 552.108 does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, we conclude the department has waived its claim under section 552.108 of the Government Code. However, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason to withhold information under section 552.302. *See* Open Records Decision No. 586 at 3 (1991). You inform us the Collin County District Attorney's Office (the "district attorney") objects to the release of the submitted information under section 552.108. Therefore, we will consider whether the department may withhold the submitted information based on the district attorney's interest under section 552.108.

Next, we note a portion of the submitted information, which we have marked, is not responsive to the present request for information because it is not within the requested time period for the CAD and MDT records. Accordingly, this ruling will not address such non-responsive information and the department need not release it in response to this request.

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 district attorney objects to the release of the submitted information because release would

interfere with its ongoing criminal prosecution. Based on this 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. 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). Thus, we find section 552.108(a)(1) is applicable to the submitted information.

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 report, the department may withhold the submitted responsive information under section 552.108(a)(1) of the Government Code.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/tp

Ref: ID# 398728

Enc. Submitted documents

c: Requestor
(w/o enclosures)