



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 22, 2011

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

OR2011-02658

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# 409844 (#ORR GARM112910).

The Plano Police Department (the "department") received a request for information pertaining to a specified incident. You state you have released some of the requested information. 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.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 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 relates to a pending criminal investigation. We note, however, the information relates to the offense of driving while intoxicated that occurred on

June 4, 2005. The statute of limitations for a felony driving while intoxicated is three years from the date of the commission of the offense. *See* Crim. Proc. Code art. 12.01(7) (providing an indictment or information on felony not listed in article 12.01(1)-(6) may be presented within three years from the date of the commission of the offense, and not afterward); *see also* Penal Code § 49.09(b) (driving while intoxicated offense under section 49.04 may be enhanced to a third degree felony). The statute of limitations for misdemeanor driving while intoxicated is two years from the date of the offense. *See* Crim. Proc. Code art. 12.02 (misdemeanors subject to two year limitations period); *see also* Penal Code § 49.04 (offense of driving while intoxicated under section 49.04 is misdemeanor). Thus, the longest possible statute of limitations for driving while intoxicated is three years. More than three years have elapsed since the events giving rise to the investigation in the information at issue, and you have not informed this office that any criminal charges were filed within the limitations period in this case. Additionally, you have not otherwise explained how release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, you have not demonstrated the applicability of section 552.108(a)(1) of the Government Code to the submitted information and none may be withheld on this basis.

Furthermore, you state you are withholding some of the requested information based upon a previous determination for withholding information under section 552.108(a)(1) granted by the ruling in *Office of the Attorney General v. Plano Police Department*, No. GV-001919 (126th Dist. Ct., Travis County, Tex., December 18, 2000). However, as you have failed to demonstrate the applicability of section 552.108(a)(1), the department may not rely on the previous determination in this instance and may not withhold any of the requested information on that basis. Accordingly, as no other exceptions to disclosure have been raised, the department must release the requested information to the requestor.<sup>1</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

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<sup>1</sup>We note the requestor has a special right of access to some of the information being released in this instance. Because such information may be confidential with respect to the general public, if the department receives another request for this information from a person other than this requestor or his authorized representative, it should again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/vb

Ref: ID# 409844

Enc. Submitted documents

c: Requestor  
(w/o enclosures)