



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 25, 2011

Mr. K. Jefferson Bray  
Senior Legal Advisor  
Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2011-12286

Dear Mr. Bray:

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# 429812 (ORR# TAYS062711).

The City of Plano (the "city") received a request for information pertaining to criminal incident report number 11-093083. You state the department has released some of the requested information, but claim 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 representative sample of information.<sup>1</sup> We have also considered comments submitted by an attorney at the requestor's law firm. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.108(a) 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[.]" Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested

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<sup>1</sup>We 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 would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the requested information relates to a pending criminal investigation. However, in correspondence to this office, an attorney for the requestor's law firm states, "it is my understanding that the criminal investigation of the [d]epartment concerning Case No. 2011-00093083 has been closed." Whether the criminal investigation is pending is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or on those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Therefore, based on the department's representation that the case is pending, we determine release of the submitted information would interfere with the detection, investigation, or prosecution of this crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we find section 552.108(a)(1) is applicable to the submitted information. You state you have released the basic information to the requestor. *See* Gov't Code § 552.108(c). Accordingly, we conclude the department may withhold the submitted information under section 552.108(a)(1).<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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

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<sup>2</sup>As we are able to resolve this matter under section 552.108, we do not address your other argument to withhold this information.

Ref: ID# 429812

Enc. Submitted documents

c: Requestor  
(w/o enclosures)