



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2011

Ms. Tamma Willis
Records Division
McClellan County Sheriff's Office
901 Washington Avenue
Waco, Texas 76701

OR2011-12842

Dear Ms. Willis:

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# 428898.

The McClellan County Sheriff's Office (the "sheriff") received a request for dispatch records, internal investigation records, dash camera footage, and accident reconstruction records pertaining to a specified accident, as well as a copy of the sheriff's pursuit protocol. You inform us some of the requested information does not exist.¹ 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 note the submitted pursuit driving policy was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-09794 (2011). In that ruling, we determined, among other things, that the sheriff may withhold portions of the sheriff's policies on suspect pursuits under section 552.108(b)(1) of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the sheriff may continue to rely on that ruling as a previous determination and withhold or release the submitted pursuit driving policy in accordance with Open Records Letter No. 2011-09794. *See* Open Records Decision No. 673

¹The Act does not require a governmental body to make available information that did not exist when the request was received. *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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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).

Next, we note the remaining requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-07427 (2011). In that ruling, we concluded, except for basic information, the sheriff may withhold the information at issue under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2011-07427 was based have changed. Accordingly, to the extent the remaining requested information is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the sheriff may continue to rely on Open Records Letter No. 2011-07427 as a previous determination and withhold or release the remaining requested information in accordance with that ruling. *See* ORD 673. To the extent the remaining requested information is not encompassed by Open Records Letter No. 2011-07427, we will address your arguments against its release.

We note the sheriff only submitted information responsive to the request for dash camera footage and the sheriff's pursuit protocol. Although you state the sheriff submitted a representative sample of information, no portion of the submitted representative sample pertains to the requested dispatch records, internal investigation records, or accident reconstruction records. Thus, we find the submitted information is not representative of the information sought in these portions of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this opinion 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. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). Because you have not submitted information responsive to these portions of the request for our review, we assume you have released it to the extent it exists. *See id.* §§ 552.301, .302. If you have not released this information, you must do so at this time. *See* 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).

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). 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 the submitted video pertains to an ongoing criminal investigation. Based on this representation and our review, we determine release of this 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. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Thus, the sheriff may withhold the submitted video under section 552.108(a)(1) of the Government Code.

In summary, the sheriff may continue to rely on Open Records Letter No. 2011-09794 as a previous determination and withhold or release the submitted pursuit driving policy in accordance with that ruling. To the extent the remaining requested information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2011-07427, we conclude the sheriff may continue to rely on Open Records Letter No. 2011-07427 as a previous determination and withhold or release the remaining requested information in accordance with that ruling. To the extent the submitted video is not encompassed by Open Records Letter No. 2011-07427, the sheriff may withhold the submitted video 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 428898

Enc. Submitted documents

c: Requestor
(w/o enclosures)