



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2011

Mr. Marc J. Schnall
Attorney for the City of Selma
Langley & Banack Incorporated
Trinity Plaza 11
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2011-18501

Dear Mr. Schnall:

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# 439149.

The Selma Police Department (the "department"), which you represent, received a request for the 9-1-1 tape, the dash camera video, and the statement of a named officer pertaining to a specified incident. You claim some of 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 instant request indicates the requestor may have previously seen the statement of the named officer. Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Thus, pursuant to section 552.007, the department may not now withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 for the information at issue, this section is a general exception to disclosure that does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive statutory predecessor to section 552.108);

see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, pursuant to section 552.007, if the department has previously released the named officer's statement, then the department may not now withhold this information under section 552.108. However, to the extent the department has not previously released the named officer's statement, we will address the department's arguments under section 552.108 for this information as well as the remaining 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 . . . 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 the information you have marked relates to a pending criminal investigation. Based on this representation and our review, we conclude the release of the information you have marked 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) (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). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must release the remaining information to the requestor.

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# 439149

Enc. Submitted documents

c: Requestor
(w/o enclosures)