



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 4, 2012

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

OR2012-04854

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# 449691 (Plano # ARNT011312).

The Plano Police Department (the "department") received a request for a specified video recording. You state you have released some of the requested information. You claim that 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 address your statement the department was unable to access the video from the department's recording system due to a "system malfunction" and thus the requested recording did not exist when the department received the request. We note the Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). We note, however, a governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with predecessor of Act does not determine availability of information); *see also* Open Records Decision No. 497 (1988) (noting fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). Furthermore, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, the request for information does not ask the department to answer questions, perform legal research, or create new information; rather,

the request requires the department to locate records that you state the department maintains. We note that you have submitted for our review the requested video footage. Because you have submitted information for our review, we believe you have made a good faith effort to submit information responsive to the request. Therefore, we will consider your arguments to withhold the submitted information.

Next, we note the requestor only seeks the specified video recording. Thus, the information in Exhibit B, which does not consist of the requested video recording, is not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

Next, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). In this instance, you state the department received the request for information on January 13, 2012. Thus, the department's fifteen-business-day deadline was February 06, 2012. However, the department did not submit a copy of the responsive information for our review until March 22, 2012. Consequently, we find the department failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, the submitted responsive information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Forth 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). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). As noted above, you raise section 552.108 of the Government Code as an exception to disclosure of the information responsive to the request. We note section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302.

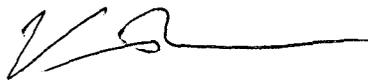
*See* Open Records Decision No. 586 at 2-3 (1991). You inform our office the Collin County District Attorney's Office (the "district attorney's office") objects to the release of the submitted information. Therefore, we will determine whether the department may withhold the submitted information on behalf of the district attorney's office under section 552.108.

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 district attorney's office objects to release of the submitted information because relates to a pending criminal prosecution with the district attorney's office and that release would interfere with the pending criminal prosecution. Based upon these representations, we conclude that 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) (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, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 449691

Enc. Submitted documents

c: Requestor  
(w/o enclosures)