



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2012

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

OR2012-08189

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# 455057 (Plano Tracking #AGUA013112).

The Plano Police Department (the "department") received a request for information related to a specified incident report and lab results. You state you have released some information to the requestor. 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, you inform us that the requested incident report was the subject of a previous ruling issued by this office in Open Records Letter No. 2012-01634 (2012). In that ruling, we determined the department may withhold the information at issue under section 552.108(a)(1) of the Government Code, but must release the basic information pursuant to section 552.108(c) of the Government Code. We understand the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, the department may continue to rely on this ruling as a previous determination and withhold or release the information at issue in accordance with this prior ruling. *See* Open Records Decision No. 673 (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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, you state the department received the submitted lab results after the department's receipt of the request at issue in the prior ruling. Therefore,

this information is not subject to the prior ruling. Accordingly, we will consider your argument against disclosure of the lab results.

Next, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). You state, and the request reflects, the department received the request for information on March 7, 2012. Therefore, the ten-business-day deadline was March 21, 2012. The department requested a ruling from this office via a letter meter-marked March 22, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the department failed to request a decision from this office within the ten-business-day period prescribed by subsection 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). You raise section 552.108 of the Government Code, which is discretionary and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 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 Nos. 586 (1991), 469 (1987). Accordingly, because the Collin County District Attorney's Office (the "district attorney's office") objects to the release of the information at issue under section 552.108, we will determine whether the department may withhold this information on behalf of the district attorney's office.

The information at issue consists of the blood test results of an arrestee's blood alcohol content. Section 724.018 of the Transportation Code provides that, on the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. Transp. Code § 724.018; *see also id.* § 724.011 (person arrested for offense alleged to have been committed while person was operating a motor vehicle while intoxicated is deemed to have consented to taking of specimens of person's breath or blood

for analysis to determine alcohol concentration), .012(b) (describing circumstances under which peace officer shall require the taking of a specimen of person's breath or blood if officer arrests person for offense involving operation of a motor vehicle and person refuses officer's request to submit to taking of specimen voluntarily). Here, the requestor is the individual who submitted the specimen. Although you seek to withhold the information at issue under section 552.108 of the Government Code, a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Thus, the department must release the submitted blood test results to the requestor.

In summary, the department may rely upon Open Records Letter No. 2012-01634 with respect to the requested incident report. The submitted blood test results must be released to this requestor pursuant to section 724.018 of the Transportation 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,



Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/dls

Ref: ID# 455057

Enc. Submitted documents

c: Requestor
(w/o enclosures)