



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2013

Ms. Leslie Spear Pearce
City Attorney
City of Plainview
901 Broadway
Plainview, Texas 79072

OR2013-01986

Dear Ms. Pearce:

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# 477782.

The Plainview Police Department (the "department") received three requests from the same requestor for a specified police report, including related dash cam video and taser records for the three responding officers, and the department's disciplinary actions, including written or oral reprimands, against a named officer over the past five years. You state you have released some information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request for information because it was created after the present request for information was received.¹ This ruling does not address the public availability

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic 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).

of any information that is not responsive to the request, and the department need not release such information in response to this request.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). We note the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Subsection 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while subsection 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudications. A governmental body claiming subsection 552.108(a)(1) 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). A governmental body that claims subsection 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

You argue Exhibits C through F are excepted under section 552.108(a)(1). The District Attorney of the 64th and 242nd Judicial Districts has submitted arguments to this office stating the information at issue pertains to an ongoing criminal case in which the district attorney's office currently has five pending charges against the suspect in the specified incident report. Further, the district attorney's office states the officer named in the request is both a victim and primary witness in the case. Based upon the district attorney's office's representations, we conclude release of the information in Exhibits C through F will interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, Exhibits C through F may generally be withheld under section 552.108(a)(1).

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note the information you have indicated was released does not contain information sufficient to satisfy the requirement that a detailed description of the offense be released. The department must release a sufficient portion of the narrative to encompass a detailed description of the offenses. Therefore, with the exception of a sufficient portion of the narrative to encompass a detailed description of the offenses, the department may withhold Exhibits C through F under section 552.108(a)(1) of the Government Code.²

We note within Exhibit B the department has withheld driver’s license numbers subject to section 552.130(a)(1) pursuant to section 552.130(c) of the Government Code and Texas license plate numbers pursuant to the previous determination in Open Records Decision No. 684 (2009). Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov’t Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body’s decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Open Records Decision No. 684 permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision. ORD 684. However, we note the vehicle identification numbers (“VINs”) you have marked are not subject to section 552.130(c) or Open Records Decision No. 684 and, therefore, may not be withheld without requesting a decision from this office. Section 552.130 provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). Upon review, we conclude the department must withhold the vehicle identification numbers, and the additional motor vehicle record information we have marked, in Exhibit B under section 552.130 of the Government Code.

In summary, with the exception of a sufficient portion of the narrative to encompass a detailed description of the offenses, the department may withhold Exhibits C through F under section 552.108(a)(1) of the Government Code. The department must withhold the

²As our ruling is dispositive, we need not address your remaining argument under section 552.103 of the Government Code for this information, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103. *See* Open Records Decision No. 597 (1991).

information we have marked in Exhibit B under section 552.130 of the Government Code. The remaining information must be released.

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 477782

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Wally Hatch
District Attorney
64th & 242nd Judicial Districts
225 Broadway, Suite 1
Plainview, Texas 79072
(w/o enclosures)