



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2014

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

OR2014-05212

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# 518115.

The Plano Police Department (the "department") received a request for video footage, phone calls, radio communication and police reports involving the requestor and another named individual.¹ You state you have released some of the requested information to the requestor. You further state you do not have any information responsive to the portion of the request seeking video footage.² 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.

¹We note that although the request is alternately styled as a request for information under the Act and as a subpoena duces tecum, the department has elected to treat it as a request for information under the Act. *See* Gov't Code § 552.0055 (subpoena duces tecum or request for discovery issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under the Act).

²The Act does not require a governmental body that receives a request for information to create 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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

You claim the information you have marked and indicated is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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(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). You state the information at issue relates to a case that is still pending and its release would interfere with the investigation and prosecution of this incident. You further state the Collin County District Attorney’s Office (the “district attorney’s office”) advises that the release of this information would interfere with the prosecution of the case and requests the department assert section 552.108(a)(1) on the district attorney’s office’s behalf. Based upon your representations and our review, we conclude release of the information at issue 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, section 552.108(a)(1) generally is applicable to the information you have marked and indicated.

Next, you claim the information you have indicated is excepted from disclosure under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov’t Code* § 552.108(a)(2). A governmental body claiming section 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 id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue deals with the detection, investigation, or prosecution of crime in relation to an investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) generally is applicable to the information you have indicated.

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, which you state has been released, the department may withhold the information you have marked and indicated under section 552.108(a)(1) of the Government Code, and the information you have indicated under section 552.108(a)(2) 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Neal", with a stylized, cursive script.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 518115

Enc. Submitted documents

c: Requestor
(w/o enclosures)