



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2009

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2009-06281

Dear Mr. Mann:

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# 342741 (GCA 09-0175).

The Garland Police Department (the "department") received a request for two specified offense reports, including the video interviews. You state you have released some of the responsive information. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information:

Initially, you inform us some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-02732 (2007). In that ruling, we determined the department may withhold portions of reports 2006R004209 and 2006R006079 pursuant to section 552.108(a)(2) of the Government Code. Furthermore, we found portions of the reports must be withheld under section 552.130 of the Government Code. Because we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department may continue to rely on that ruling as a previous determinations and withhold or release the submitted incident reports in accordance with Open Records Letter No. 2007-02732. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Next, you claim that the submitted videos are subject to section 552.108. 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

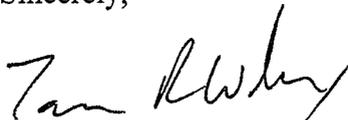
section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You claim that the submitted videos are excepted under section 552.108(a)(1). In addition, you state that both of the submitted videos relate to open and pending criminal investigations and that no charges have been filed. However, we note that the submitted videos relate to conduct that occurred on February 10, 2006 and March 2, 2006. The statute of limitations for the offense described in both reports is two years. *See* Pen. Code § 28.03(b)(2) (criminal mischief offenses are misdemeanors where pecuniary loss is less than \$1,500); Crim. Proc. Code art. 12.02 (indictment for a misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward). Thus, the limitations period has passed for the offense underlying both of the submitted interview videos. You have not otherwise explained how release of the submitted videos would interfere with the detection, investigation, or prosecution of crime. Thus, you have failed to demonstrate the applicability of section 552.108(a)(1) to the submitted videos and they may not be withheld under that exception.

In summary, to the extent the submitted offense reports are identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2007-02732, the department may continue to rely upon that ruling as a previous determination and withhold or release the identical information in accordance with that ruling. 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 at (512) 475-2497.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/eeg

Ref: ID# 342741

Enc. Submitted documents

c: Requestor
(w/o enclosures)