



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2009

Mr. Jason Day
City Attorney
City of Royse City
P.O. Box 638
Royse City, Texas 75189

OR2009-17072

Dear Mr. Day:

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# 362974 (RCCA 09-0102).

The City of Royse City (the "city") received a request for the transcripts, audio, and video of the internal affairs investigation of a named city police officer. You claim that portions of the requested information are 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 requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-12902 (2009). In that ruling, this office determined that you could withhold the information you had marked in green under section 552.108(a)(1) of the Government Code. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the city may continue to rely on that ruling as a previous determination and withhold the same information that was at issue in the prior ruling in accordance with the previous determination. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we address your claim under section 552.108 of the Government Code for the information not subject to the previous determination. 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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the request was for information related to an internal affairs investigation. Section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor to Gov’t Code § 552.108). However, you state that the information you seek to withhold concerns a criminal investigation separate from the internal affairs investigation. Based on your representations, and our review of the information at issue, we conclude that release of the information you seek to withhold, which consists of video recordings and the information you have marked in green in the submitted report, would interfere with the the detection, investigation, or prosecution of crime. We therefore conclude that the city may withhold the video recordings and the information you have marked in green in the submitted report under section 552.108(a)(1) of the Government Code.¹ *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 362974

Enc. Submitted documents

c: Requestor
(w/o enclosures)