



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2009

Ms. Courtney Alvarez
City Attorney
City of Kingsville
P.O. Box 1458
Kingsville, Texas 78364

OR2009-16071

Dear Ms. Alvarez:

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# 361323.

The City of Kingsville (the "city") received a request for video recordings and offense reports pertaining to a specified arrest. You state the city no longer has video recordings of the specified arrest.¹ You state you have released some of the responsive information. You claim the submitted information is exempted 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.

Section 552.108(a)(2) of the Government Code exempts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that 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)(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

¹The 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).

adjudication. *Id.* You state, and have provided documentation showing, that the submitted information pertains to a case in which the defendant was placed by the Kleberg County Attorney's Office (the "county") in a pre-trial diversion program on February 12, 2007. You further state the pre-trial diversion program lasted for twelve months and the case was not refiled by the county. Based on your representations and our review, we agree the submitted information pertains to a criminal case that did not result in a conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) applies to the submitted information.

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *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). Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which you state has been released, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.²

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

²As our ruling is dispositive, we need not address your remaining arguments.

Ref: ID# 361323

Enc. Submitted documents

c: Requestor
(w/o enclosures)