



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 8, 2010

Mr. Joe Torres III  
City Attorney  
City of Alice  
216 North Texas Boulevard, Suite 2  
Alice, Texas 78332

OR2010-03357

Dear Mr. Torres:

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# 373163.

The Alice Police Department (the "department"), which you represent, received a request for information relating to a specified arrest and citation. You claim that 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.

You claim the submitted information is excepted from public disclosure under section 552.108 of the Government Code, which provides in relevant 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 deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)–(2), (b)(1)–(2). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In contrast, subsections 552.108(a)(2) and (b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

Although you generally assert the submitted information is excepted under section 552.108, you have not specified the subsection of section 552.108 that applies to the information, nor have you submitted any specific arguments explaining how that subsection applies to the information. *See Gov't Code § 552.301(e)(1)(A)* (stating it is governmental body's burden to establish applicability of claimed exception or otherwise explain why requested information should not be released). Consequently, you have failed to establish the applicability of section 552.108 of the Government Code to the submitted information, and the department may not withhold the information on that basis. As you raise no other exception to disclosure, the information at issue must be released.<sup>1</sup>

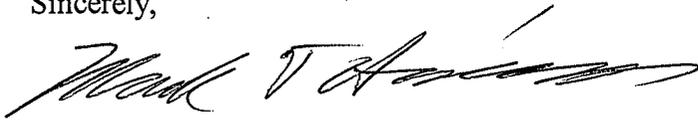
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<sup>1</sup> We note the requestor, as the individual whose information is at issue, has a special right of access to some of the information being released in this instance. Gov't Code § 552.023(a) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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](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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl

Ref: ID# 373163

Enc. Submitted documents

c: Requestor  
(w/o enclosures)