



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 31, 2010

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

OR2010-04569

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# 374400.

The Alice Police Department (the "department") received a request for all written reports documenting the arrest of a specified individual on December 27, 2009 and all video and audio recordings concerning the arrest. You claim the submitted video recording is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the request for all written reports documenting the arrest. To the extent information regarding this portion of the request existed on the date the department received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. The department states it received the request for information on January 7, 2010. Accordingly, the department's ten-day-deadline was January 22, 2010.<sup>1</sup> The

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<sup>1</sup>We note the City of Alice offices were closed January 18, 2010 for Martin Luther King, Jr. Day. This office does not count holidays as business days for the purpose of calculating a governmental body's deadlines under the Act.

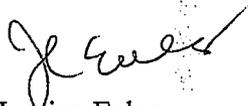
department did not request a ruling until January 25, 2010. Consequently, we find the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 at 2 (1977). Section 552.108 is discretionary in nature, and serves only to protect a governmental body's interests; as such, it may be waived. See Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the department may not withhold the submitted video recording pursuant to section 552.108 of the Government Code. As you have raised no other exceptions to disclosure of the submitted video recording, it must be released to the requestor.

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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 374400

Enc. Submitted documents

c: Requestor  
(w/o enclosures)