



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2010

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

OR2010-16502

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# 398687.

The City of Alice (the "city") received a request for a mailing list of persons who have received permission to complete a driving safety course. You assert that there is no responsive information. In the alternative, you claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you state the city inadvertently created the submitted list in response to the request for information and the city did not have any responsive information at the time the request was received. Thus, you ask us to determine the submitted information need not be released "based on its initial non-existence." We note the Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the governmental body. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We note that because the city was able to compile the submitted list, it appears that information the city deems responsive to the instant request was maintained by the city at the time of the request. *See* Gov't Code § 552.002. Therefore, we find the city has made a good faith effort to relate the request at issue to information the

city maintains. Therefore, we will determine whether the submitted information may be withheld pursuant to the claimed exception against disclosure.

You claim that the submitted information is excepted under sections 552.108(a)(1) and (b)(2) of the Government Code. Section 552.108 provides in pertinent 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;

...

(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:

(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[.]

Id. § 552.108(a)(1), (b)(2). Generally, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(b)(2). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, section 552.108(b)(2) applies only to 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 this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that all of the defendants listed in the submitted information requested defensive driving and, thus, “no final convictions or deferred adjudications have resulted from these prosecutions.” However, it is not clear from your statements whether the criminal cases at issue are still pending or have concluded in a final result other than conviction or deferred adjudication. Because you have provided this office with contradictory assertions, we find you have failed to sufficiently demonstrate the applicability of section 552.108 to the submitted information. *See Gov’t Code* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Consequently, the city may not withhold the submitted information under section 552.108 of the Government Code. As you raise no further exceptions to its disclosure, the submitted 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eb

Ref: ID# 398687

Enc. Submitted documents

c: Requestor
(w/o enclosures)