



January 14, 2000

Mr. Steven D. Monté  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
2014 Main Street  
Dallas, Texas 75201

OR99-3163A

Dear Mr. Monté:

You ask this office to examine Open Records Letter No. 99-3163 (1999), issued on November 9, 1999, because you claim that this office improperly failed to consider your correspondence of September 14, 1999. Your request was assigned ID# 131735.

The City of Dallas ("the city") received a request for information relating to "Club Pachanga," George's Country Club, and a named individual. You argue that this office improperly failed to consider your timely correspondence of September 14, 1999 and you question the accuracy of the factual determination made by this office in Open Records Letter No. 99-3163 (1999). Where this office determines that a factual error is made when determining a governmental body's compliance in submitting required information in the decision process under section 552.301, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Accordingly, we will examine Open Records Letter No. 99-3163 (1999) in light of your assertions. *See* Gov't Code § 552.301(f).

In Open Records Letter No. 99-3163 (1999), this office found that because the city had failed to submit the information required by section 552.301(e)(1)(D) of the Government Code (a copy or representative sample of the specific information requested) by September 16, 1999 (fifteen business days after receiving the August 25, 1999 request for information), the requested information must be released unless there was a compelling reason to withhold it. Gov't Code § 552.302. We further found that you had not provided a compelling reason and the requested information must be released. Open Records Letter Ruling No. 99-3163 (1999). In your current request, you argue that you timely submitted a copy of the requested information to this office with your letter to this office dated September 14, 1999.

We agree that this office received your September 14, 1999 correspondence timely. The correspondence was postmarked by United States first class mail on September 15, 1999. Gov't Code § 552.308(a). The ruling, however, did not address the timeliness of your correspondence dated September 14, 1999. Open Records Letter No. 99-3163 (1999), on the other hand, correctly explained that the city had failed to submit a copy of the specific information requested to this office altogether. Although your correspondence dated September 9, 1999, indicates that you would be forwarding a copy of the requested information, this office has no record of actually receiving the information. Additionally, your September 14, 1999 correspondence did not include the requested information required by section 552.301(e)(1)(D). That letter states that a petition and judgment sheets would be enclosed, but not the requested information. Again, after a search of our records, we could find no evidence that the city properly submitted the requested information at issue as required by section 552.301(e)(1)(D). Consequently, we decline to alter Open Records Letter No. 99-3163 (1999). You must immediately release the requested information in accordance with Open Records Letter No. 99-3163 (1999).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, flowing style.

Don Ballard  
Assistant Attorney General  
Deputy Chief, Open Records Division

JDB\ljp

Ref.: ID# 131735

encl. Open Records Letter No. 99-3163 (1999)

cc: Mr. Ernest Leonard  
8117 Preston Road  
Dallas, Texas 75225  
(w/ Open Records Letter No. 99-3163 (1999))