



July 12, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR2001-3018

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150073.

The Texas Department of Public Safety (the "department") received a request for witness information and statements, a scene diagram, and photographs pertaining to a specified accident. In a letter dated May 22, 2001, you requested a decision from this office to withhold the requested witness information and scene diagram. You informed this office that the photographs had been released to the requestor. In Open Records Letter No. 2001-2186 (2001), this office determined that you could withhold the witness information and scene diagram under section 552.108(a)(1) of the Government Code.

In a letter dated May 25, 2001, you informed us that you mistakenly believed that the requested photographs had been released to another requestor. Because the photographs had not been released to another requestor, you now ask to withhold the requested photographs. Pursuant to section 552.301(a) of the Government Code, a governmental body must request a decision from this office in order to withhold requested information. The governmental body must ask for an attorney general's decision not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). The department received the request on May 8, 2001 and, therefore, had until May 22, 2001 to request a decision from this office to withhold the requested photographs. Because you did not ask to withhold the requested photographs until May 25, you failed to request a decision for the photographs as required by section 552.301. You also failed to submit a copy of the photographs within fifteen business days as required by section 552.301(e)(1)(D).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 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. *See* Gov't

Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You argue that the photographs are excepted under section 552.108 of the Government Code. Section 552.108 does not generally provide a compelling reason to overcome the presumption of openness. Accordingly, you must release the requested photographs.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 150073

Enc: Submitted documents

c: Ms. Ronda Bland
Adjuster
The Gordon Smith Company
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(w/o enclosures)