



January 29, 2002

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2002-0429

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158109.

The City of El Paso (the "city") received a request on November 8, 2001, for El Paso Police Department Internal Affairs history cards for police officers who were disciplined for on- or off-duty sexual misconduct within the last five years. On November 12, the city sought clarification of the meaning of the term "sexual misconduct" in the request. *See Gov't Code* § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 663 at 5 (1999) (addressing circumstances under which request for clarification tolls deadline under section 552.301(b)). The requestor subsequently responded to the city's request for clarification in a letter dated November 16, 2001, by listing specific acts of sexual misconduct.

You inform this office that the city has no Internal Affairs history cards that contain notations of discipline for "sexual misconduct" or for any of the acts listed by the requestor, because entries on the cards are not made with this amount of specificity. Instead, you advise, entries on the disciplinary history cards carry notations such as "unprofessional conduct," "violation of rules and regulations," and "dereliction of duty." As a result, you claim that the city has no documents that are specifically responsive to the request. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d

266 (Tex. Civ. App.--San Antonio 1978, writ dismiss'd); Open Records Decision No. 452 at 3 (1986).

You further indicate that in order to comply with such a request, the city would be required to "do extensive research through several thousand administrative investigative files, compile a list of officers who may have received discipline for one of the listed acts and then provide him with the disciplinary history cards of those officers." In this regard, we note that a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds or to which it has access. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. - San Antonio 1978, writ dismiss'd); Open Records Decision No. 561 at 8 (1990). However, the Act does not require a governmental body to answer factual questions, perform legal research, or create new information in responding to a request. See Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because the requestor seeks the above-referenced internal affairs history cards rather than files of officers disciplined for sexual misconduct, we conclude that the city need not perform such research in order to comply with the request. A request for the files of officers who were disciplined for sexual misconduct would be different from the instant request. A request for such files would not require the city to perform research and the city would be required to search through its files for information responsive to the request.

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

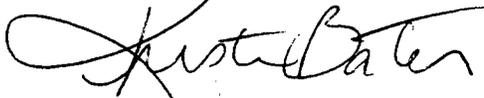
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Texas Building and Procurement 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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 158109

c: Mr. Gerald Cichon  
CLEAT  
747 East San Antonio, Suite 103  
El Paso, Texas 79901