



May 24, 2002

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County
133 North Industrial Boulevard, LB 19
Dallas, Texas 75207-4399

OR2002-2792

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163437.

The Dallas County District Attorney (the "district attorney") received two requests, both dated March 3, 2002. The first request was for "the D.P.D. [sic] Public Integrity investigation documents that did not support the filing of criminal charges." The second request asked for all documents related to the following:

January, 2001 letter referred to in the first sentence of the second paragraph of the attached letter dated February 26, 2002 from Assistant District Attorney Eric Mountain [sic].

July, 2001 letter referred to in the first sentence of the second paragraph of the attached letter dated February 26, 2002 from Assistant District Attorney Eric Mountain [sic].

Dallas Police Department Public Integrity Unit Investigation referred to in the second sentence of the second paragraph of the attached letter dated February 26, 2002 from Assistant District Attorney Eric Mountain [sic].

You state that the district attorney does not possess or maintain the Dallas Police Department's Public Integrity investigation files. You further state that the January 2001 letter does not exist, and that the communication at issue was in fact a telephone conversation, not a letter. The Public Information Act does not require a governmental body to release information that does not exist, nor prepare new information in response to a request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open

Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984). You inform us that the July 2001 letter has been released to the requestor. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You have submitted for our review two closed Public Integrity investigation files, #01-00010(41) and #01-00011(41), that you argue are excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from required public disclosure “[i]nformation held by a law enforcement agency . . . that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” You represent, and the records before us confirm, that the criminal investigations conducted by the Public Integrity Unit were closed because it was determined that no criminal violation occurred. We therefore conclude that the district attorney may withhold most of the submitted information pursuant to section 552.108(a)(2) of the Government Code.

However, as you acknowledge, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The district attorney must release these types of information in accordance with *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note that the district attorney has the discretion to release all or part of the remaining information that is not otherwise made confidential by law. Gov’t Code § 552.007.¹

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

¹Because we are able to resolve the matter under section 552.108, we do not address the section 552.101 and 552.111 assertions.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 163437

Enc. Submitted documents

c: Mr. Frederick Hal Slice
2406 Diamond Oaks
Garland, Texas 75044
(w/o enclosures)