



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 11, 2003

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston - Legal Department
P. O. Box 1562
Houston, Texas 77251-1562

OR2003-5587A

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185794A.

The Houston Police Department (the "department") received a request for photographs associated with a specified incident report and sought a ruling from this office as to whether the requested information was excepted from disclosure under the Public Information Act. In response, this office issued Open Records Letter No. 2003-5587 (2003) to the department on August 12, 2003 in which we concluded that the information must be released to the requestor. We have re-examined our ruling in that decision and have determined that an error was made in its issuance. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that the Office of Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of this chapter). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on August 12, 2003. You claim that the requested information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered your representations and your claimed exceptions to disclosure.

We note that, prior to the issuance of Open Records Letter No. 2003-5587 (2003), we had previously addressed the information requested in this instance in Open Records Letter No. 2002-7302 (2002). In that decision, we ruled that, with the exception of basic information, the department could withhold the requested information pursuant to section 552.108(a)(1) of the Government Code. You state that the status of the investigation that was the subject of that decision remained unchanged upon the department's receipt of the present request for information. Accordingly, we conclude that the department may rely

on our decision in Open Records Letter No. 2002-7302 (2002) and withhold the information requested in this instance in accordance with that ruling. *See* Gov't Code § 552.301(f); *see also* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).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 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).

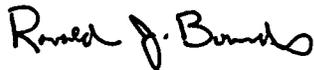
¹Because our ruling relies on Open Records Letter No. 2002-7302 (2002), we need not address your claimed exceptions to disclosure.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 185794A

c: Mr. Craig S. Wolcott
Hays, McConn, Rice & Pickering
400 Two Allen Center
1200 Smith Street
Houston, Texas 77002