



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2003

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2003-6798

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188292.

The Fort Worth Police Department (the "department") received a written request for "[a]ll evidence in *The State of Texas v. Richard Wayne Jones*." In the city's original correspondence to this office, the city contended that certain information coming within the scope of the request was made confidential under section 411.153 of the Government Code and was thus excepted from required public disclosure pursuant to section 552.101 of the Government Code.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 411.153 provides in pertinent part that a "DNA record stored in the DNA database is confidential and is not subject to disclosure under the open records law." Gov't Code § 411.153(a). "DNA record" means "the *results of a forensic DNA analysis performed* by a DNA laboratory and, if known, the name of the person who is the subject of the analysis." *Id.* § 411.141(4) (emphasis added). Although the city originally indicated to this office that it possessed a "DNA record stored in the DNA database," you have subsequently informed this office that "no DNA test was ever conducted

¹Although the city also originally contended that the requested information was excepted from public disclosure pursuant to section 552.108, we conclude that it is waived because the city has submitted no arguments regarding this exception. See Gov't Code §§ 552.301, .302.

to attempt to match the defendant's DNA with the biological material obtained from the victim." Because no DNA analysis was ever performed, we conclude that section 411.153 is inapplicable in this instance.

We next note that the Public Information Act (the "Act") applies only to tangible items such as documents and other "developed materials." Attorney General Opinion JM-640 (1987). Section 552.002(a) of the Government Code defines public information as "*information* that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." (Emphasis added.) This office has ruled that tangible physical items are not the type of information contemplated under the Act. *See, e.g.,* Open Records Decision No. 581 (1990). Thus, we agree that the tangible physical evidence requested is not public information as that term is defined in section 552.002 of the Government Code, and is not information made public by section 552.021 of the Government Code.

You have, however, submitted to this office as responsive to the request an inventory list of the evidence collected during the underlying criminal investigation. *See* Open Records Decision No. 87 (1975) (governmental body must make good faith effort to relate documents it holds to information requested). You do not contend that the submitted inventory list is excepted from required public disclosure. We therefore conclude that the submitted inventory list must be released to the requestor.

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

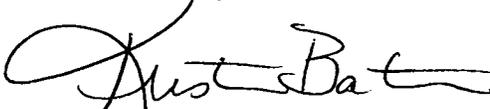
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "Kristen Bates", written in a cursive style.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/RWP/sg

Ref: ID# 188292

Enc: Submitted documents

c: Mr. Eric N. Lieberman
The Washington Post
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Washington, D.C. 20071
(w/o enclosures)