



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2004

Ms. Janis Kennedy Hampton
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2004-2480A

Dear Ms. Hampton:

You ask this office to examine Open Records Letter No. 2004-3361 (2004).

The Bryan Police Department (the "department") received a request for case number 03-090350. In your original request for a decision in this matter, you claimed that the information was excepted from public disclosure by section 552.108 of the Government Code. In Open Records Letter No. 2004-2480 (2004), we found that you could withhold the requested report, except for basic information, under section 552.108. Subsequent to your original request, this office inadvertently created a second, separate file for your same request for a decision. The second file resulted in Open Records Letter No. 2004-3361, in which we concluded the department had to release the information because of its untimely request for a decision. You ask this office to examine Open Records Letter No. 2004-3361 in light of this office's error. Where this office determines that a factual error is made when determining a governmental body's timeliness in submitting required information in the decision process under section 552.301, and that error resulted in an incorrect decision, we will correct the previously issued ruling.

We have reviewed our records and agree that you did indeed timely submit your request for a decision. Consequently, we are withdrawing Open Records Letter No. 2004-3361, and you should rely upon Open Records Letter No. 2004-2480 for the requested offense report.

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 of 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 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

c: Ms. LaTrense S. Jordan
3625 Wellborn Road #1104
Bryan, Texas 77801