



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2005

Ms. Jacqueline Cullom Murphy
Hays County
111 East San Antonio
San Marcos, Texas 78666

OR2005-02203

Dear Ms. Murphy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221420.

The Hays County Commissioner's Court (the "commissioner's court") received a request for a specific e-mail. You inform us that the requested information is the subject of a previous ruling from this office. We have considered your arguments and reviewed the submitted information.

In Open Records Decision No. 673 (2001), this office addressed the circumstances under which a governmental body may rely on a prior ruling from this office as a previous determination for purposes of section 552.301 of the Government Code. In that ruling, we concluded that one situation in which a governmental body may rely on a prior ruling of this office as a previous determination arises when the following criteria are met: 1) the information at issue consists of precisely the same records or information previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body that receives the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise information is or is not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

You assert that the information at issue here was the subject of a previous ruling issued by this office as Open Records Letter No. 2004-10509 (2004) on December 10, 2004. In that ruling, this office concluded that section 552.103 of the Government Code authorized the commissioner's court to withhold the requested information from disclosure. However, you inform this office that the requested information has been subsequently released to the media. Because the commissioner's court has voluntarily released the information at issue to a member of the public, it may not now withhold such information from another requestor under section 552.103. See Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision Nos. 490 (1988), 463 (1987) (if governmental body voluntarily releases information to one member of public, the Act's exceptions to disclosure are waived unless information is deemed confidential), 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 may be waived). Therefore, as relevant facts have changed since the issuance of Open Records Letter No. 2004-10509, we conclude that the commissioner's court may no longer rely on that ruling with respect to the applicability of section 552.103 to the requested information. As you raise no other exceptions to disclosure, and the requested information is not otherwise confidential by law, you must release the requested information 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 221420

Enc. Submitted documents

c: Mr. Charles O'Dell
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(w/o enclosures)