ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2006

Ms. Christy Drake-Adams
Bovey, Akers & Bojorquez, L.L.P.
12325 Hymeadow Drive, Suite 3-200
Austin, Texas 78750

OR2006-04002

Dear Ms. Drake-Adams:

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# 247166.

The City of Bartlett (the "city"), which you represent, received a request for personnel file information pertaining to two named police officers. You state that some of the information responsive to the request has been released. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that some of the requested information has been previously addressed by this office in Open Records Letter No. 2006-02152 (2006), where we ruled the city could withhold the videotape at issue under section 552.108(a)(1) of the Government Code. As you state that the law, facts, and circumstances surrounding this prior ruling have not changed, you may continue to rely on the prior ruling as a previous determination and withhold the requested information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as

section 1701.454 of the Occupations Code. The submitted information consists of a Report of Resignation or Separation of License Holder form addressed to the Texas Commission on Law Enforcement (the "commission"). Section 1701.452 requires that a law enforcement agency submit a report to the commission regarding an officer licensed under chapter 1701 who resigns or is terminated from the law enforcement agency. *See* Occ. Code § 1701.452. Section 1701.454 makes such reports, which are commonly referred to as "F-5s," confidential and provides in relevant part:

> (a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

Occ. Code § 1701.454. You inform us that the officer named in the submitted report was not terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses. Therefore, we agree that the city must withhold the submitted F-5 pursuant to section 552.101 in conjunction with section 1701.454 of the Occupations Code.

In summary, the city may withhold the requested videotape in accordance with our holding in Open Records Letter No. 2006-02152. The city must withhold the F-5 report under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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); *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 Office of the Attorney General 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. 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,

Shelli Egger
Assistant Attorney General
Open Records Division

SE/er

Ref: ID# 247166

Enc. Submitted documents

c: Ms. Crystal Cotti
KTBC Fox 7 News
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Austin, Texas 78701
(w/o enclosures)