



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2006

Ms. Raethella Jones
Assistant District Attorney
Brazoria County
County Courthouse
111 E. Locust, Suite 408A
Angleton, Texas 77515

OR2006-05114

Dear Ms. Jones:

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# 249271.

The Brazoria County Sheriff's Department (the "department") received two identical requests from the same requestor seeking nine categories of information pertaining to the traffic stop and arrest of a named individual, racial profiling statistics of the department and a named officer, a copy of the department's policies and procedures, and all recordings of phone calls during a specified period of time. The department also received a third request from the same requestor seeking all radio communications during a specified period of time, in addition to the same information requested in the first two requests. You state that some of the requested information does not exist. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dis'm'd); Open Records Decision No. 452 at 3 (1986) (Act does not require governmental body to disclose information that did not exist when request for information was received). You also state that, with the exception of the responsive radio communications, the department has released the remaining requested information. *See Gov't Code § 552.232* (prescribing procedures for response to repetitious or redundant requests for information). You state that the department has not released the requested radio communications sought in the requestor's third request. Although you do not specifically claim an exception to the disclosure of the radio communications, you generally assert that any newly requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted arguments.

Initially, we must address the procedural obligations of the department. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to

this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. As of the date of this letter, you have not submitted the requested radio communications for our review.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302 of the Government Code); Open Records Decision No. 319 (1982).

Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and is waived by the governmental body's failure to comply with section 552.301. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, to the extent you assert section 552.103 for the radio communications, we conclude that the department has waived its claim under that exception, and the radio communications at issue may not be withheld on this basis. As you raise no other exceptions to disclosure for the radio communications at issue, you must release them to the requestor.

You also assert that section 552.103 is applicable to any newly requested information sought by the requestor. This office does not have the authority to issue rulings on information sought in future requests. *See generally* Gov't Code § 552.301 (indicating that this office has authority to render decisions only with respect to information sought by instant written request). However, section 552.232 of the Government Code prescribes procedures for governmental bodies when responding to repetitious or redundant requests for information. *See* Gov't Code § 552.232. Therefore, the department need only seek a ruling from this office for any future requests for new information received by the department.

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 249271

Enc. Submitted documents

c: Ms. Tara M. Williams
11606 Bay Crossing Drive
Pearland, Texas 77584
(w/o enclosures)