



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2006

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2006-11279

Dear Ms. Grace:

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# 260510.

The City of Austin (the "city") received a request for specified crime scene photographs. You state that you have provided the requestor with a portion of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

The city claims that the submitted information is excepted from disclosure under section 552.107(2) of the Government Code. This section excepts from required public disclosure information if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). The city states that it is a party in a case, styled *Jesse Lee Owens, Jr., deceased, by Barbara Shorts, et al v. City of Austin Police Department, et al*, Civil Action No. A-05-CA-287 SS, that is pending in US District Court (the "court"). The city informs

¹ We note that the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2004-3448 (2004). However, the facts and circumstances on which that prior ruling was based have changed since its issuance. As such, we will address the claimed exceptions against disclosure of the submitted information at issue. See Open Records Decision No. 673 (2001) (describing the four criteria for a "previous determination").

us that a protective order was entered by the court in that proceeding.² The city states that the requested photographs have been designated by both parties as “confidential” and “for counsel only” in conformity with the submitted protective order. Therefore, based on the city’s representations and our review of the information at issue, we conclude that the city must withhold the submitted information pursuant to section 552.107(2) of the Government Code.³

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

² We note that the city has provided a copy of the protective order for our review.

³ As our ruling is dispositive, we need not address the remaining argument against disclosure.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/sdk

Ref: ID# 260510

Enc. Submitted documents

c: Mr. David Fisher
605 North Highway 95
Elgin, Texas 78621
(w/o enclosures)