



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2007

Ms. Cathie Childs
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR2007-16207

Dear Ms. Childs:

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# 296891.

The Austin Police Department (the "department") received a request for all video or audio recordings concerning a particular operation and the subsequent discipline of a named police officer. You state that some of the requested information will be released. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that a portion of the requested information has been previously ruled upon by this office in Open Records Letter No. 2007-12979 (2007). In that letter ruling, we concluded that the submitted information may be withheld under section 552.108(a)(1). Since the law, facts, and circumstances surrounding this prior ruling have not changed, the department may continue to rely on Open Records Letter No. 2007-12979 as a previous determination and withhold some of 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). We now turn to your argument regarding the information that was not ruled upon in Open Records Letter No. 2007-12979.

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. Section 1703.306 of the Occupations Code governs information obtained in the course of conducting a polygraph examination and it provides that “a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination” except to certain categories of people. *See* Occ. Code § 1703.306. Because the requestor does not fall within any of the enumerated categories, the department must withhold the submitted polygraph information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

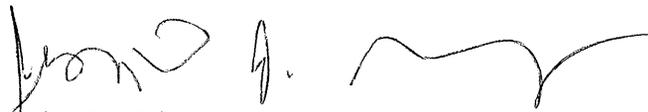
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,

A handwritten signature in black ink, appearing to read 'Jessica J. Maloney', with a long horizontal flourish extending to the right.

Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 296891

Enc. Submitted documents

c: Ms. Sally Hernandez
KXAN Austin News
P.O. Box 490
Austin, Texas 78767
(w/o enclosures)