



March 21, 2001

Ms. Esther L. Hajdar
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2001-0903A

Dear Ms. Hajdar:

On behalf of the University of Texas System (the "system") you ask this office to examine Open Records Letter No. 2001-0903 because you believe that this office misread a request for information and thereby erroneously concluded that the system waived its section 552.103 interest to some of the requested information. Your request was assigned ID# 147260. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling.

This office concluded that most of the information at issue in Open Records Letter No. 2001-0903 must be released to the public based on your failure to submit a request for decision in response to an earlier request for information. You have brought to our attention the fact that the earlier request does not encompass all of the information that this office found to be made public.

You submitted a request for opinion in response to a request for information "on any person who has ever been injured by falling off cliffs or embankments located on University property." This request is date-stamped as received by the system on December 19, 2000. You submitted a notice of claim letter in support of your argument for withholding information responsive to this request under section 552.103 of the Government Code. This claim letter is from an attorney who represents a man allegedly killed by injuries resulting from a fall off a cliff on Waller Creek on University property on October 15, 1999. This letter is date-stamped as having been received by the system on April 6, 2000. This letter includes the following request:

Please also consider this an Open Records Act request for information on all other claims, complaints or information on any other persons or persons who have ever been injured or killed by falling off the Waller Creek cliffs located on University property on Red River Street by Centennial Park.

You did not request a decision from this office regarding the April 6, 2000 request. As determined in Open Records Letter No. 2001-0903, the information responsive to this request is presumed to be public, and as no compelling reason to withhold the information had been demonstrated, it must be released. However, as you note, the April 6, 2000 request is for “information on all *other* claims, complaints or information on any *other* persons or persons who have ever been injured or killed by falling off the Waller Creek cliffs located on University property on Red River Street by Centennial Park.” (Emphasis added). This earlier request therefore does not seek information about the incident that is the basis of the claim letter containing the request. Since such information is not responsive to the April 6, 2000 request, it need not be released as a result of your failure to timely request an opinion in response to this request. As determined in Open Records Letter No. 2001-0903, you have demonstrated that litigation was reasonably anticipated at the time that you received the December 28, 2000 request for information. We find that the information related to the October 15, 1999 incident that is the basis of the claim letter received April 6, 2000 is related to that anticipated litigation. Therefore, you may withhold the information related to the October 15, 1999 incident under section 552.103 of the Government Code. Open Records Letter No. 2001-0903 is overruled to the extent it conflicts with this current ruling.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 General Services 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. 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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 144791

cc: Mr. Kevin R. Madison
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