OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 2, 2003

Mr. Leslie R. Sweet
Legal Advisor
Dallas County Sheriff's Department
133 North Industrial Boulevard, LB 31
Dallas, Texas 75207-4313

OR2003-4551

Dear Mr. Sweet:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 186084.

The Dallas County Sheriff's Department (the "department") received a request for a copy of the criminal investigation file on Dr. J. Guileyardo. You claim that the requested information is excepted from disclosure under section 552.108(a)(2) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

In Open Records Letter No. 03-3728, this office determined that the information at issue here is excepted from required public disclosure based on section 552.108(a)(2) and that the department may withhold the information from required public disclosure. Section 552.301 of the Government Code allows a governmental body to withhold requested information without the necessity of seeking an open records ruling from this office "if there has not been a previous determination about whether the information falls within one of the exceptions." Gov't Code § 552.301(a). In order for a ruling to serve as a "previous determination" for purposes of section 552.301, four criteria must be met: 1.) this office has ruled on the precise information that was previously submitted to this office; 2.) the governmental body that received the request for the information is the same governmental body that previously requested and received a ruling from the attorney general; 3.) the attorney general's prior ruling concluded that the precise information is excepted from disclosure under the Act; and 4.) the law, facts, and circumstances on which the prior attorney general ruling was based

have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001). Here, we understand that the law, facts, and circumstances on which Open Records Letter No. 03-3728 (2003) were based have not changed. Accordingly, the department may rely on that ruling as a previous determination under section 552.301 and withhold the requested records from the requestor based on section 552.108(a)(2) of the Government Code. *See id.*

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, 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 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 186084

Enc: Submitted documents

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