



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 28, 2005

Ms. M. Ann Montgomery  
Assistant County and District Attorney  
Ellis County  
Temporary Administration Building  
1201 N. Hwy. 77, Suite 104  
Waxahachie, Texas 75165-7832

OR2005-08798

Dear Ms. Montgomery:

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# 233181.

The Ovilla Police Department (the "department") received a request for the arrest reports, incident reports, prosecution reports, and probable cause affidavits relating to the sexual assault of a child. You state that you have released some information, but claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that a portion of the submitted information was created after the department received this request. Because the department did not maintain this information at the time it received this request, the information is not encompassed by the request, and we do not address it in this ruling. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266

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<sup>1</sup>We note that you redacted information from the copy of the arrest warrant and arrest warrant affidavit that you released to the requestor. In a lawsuit that Ellis County filed against the Office of the Attorney General regarding the release of information under article 15.26 of the Code of Criminal Procedure, Judge Cooper issued an order in Ellis county's favor (No. GV 304699). Accordingly, you should rely on that decision in determining whether to release the information in the arrest warrant and arrest warrant affidavit.

(Tex. Civ. App.—San Antonio 1978, *writ dismiss'd*); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at the time request was received).

Next, we note, and you acknowledge, that the requested information has been previously ruled upon by this office in Open Records Letter No. 2004-7515 (2004). As you state that the law, facts, and circumstances surrounding this prior ruling have not changed, you must continue to rely on the prior ruling as a previous determination and must withhold the requested information. *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). As our ruling on this issue is dispositive, we need not address your arguments.

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).

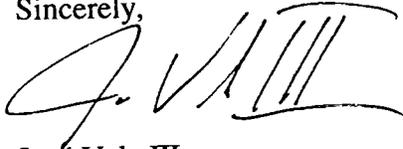
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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,

A handwritten signature in black ink, appearing to read 'J. Vela III', with a stylized flourish at the end.

José Vela III  
Assistant Attorney General  
Open Records Division

JV/krl

Ref: ID# 233181

Enc. Submitted documents

c: Robert N. Udashen, P.C.  
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(w/o enclosures)