



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2005

Ms. Leann D. Guzman
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2005-09653

Dear Ms. Guzman:

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# 235280.

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified incident. You state that the department is withholding the requested forensic reports related to this case pursuant to a previous ruling issued by this office. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you inform us that the requested forensic reports were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2005-06866 (2005). Assuming there has not been a change in the law, facts, or circumstances on which this prior ruling was based, we conclude that the department must continue to rely on our decision in Open Records Letter No. 2005-06866 with respect to the requested forensic reports that were subject to that ruling.¹ See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001) (setting forth the four criteria for a "previous determination").

¹The four criteria for this type of "previous determination" are (1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; (2) the governmental body which received the request for the records or 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 records or information are or are not 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).

Next, we note that the information submitted as Exhibits C, D, and E is identical to the information that was the subject of another previous request for information, in response to which this office issued Open Records Letter No. 2005-08752 (2005). As we have no indication that there has been a change in the law, facts, or circumstances on which that prior ruling was based, we conclude that the department must continue to rely on our decision in Open Records Letter No. 2005-08752 with respect to the submitted information that was subject to that ruling. *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

We address your claim under section 552.108 of the Government Code with respect to the photographs submitted as Exhibit F. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the information at issue is “related to a case that is pending prosecution[.]” However, we note that the requestor states that the arrestee in this case has been convicted. The question of whether the information at issue relates to a pending prosecution is a question of fact. This office cannot resolve factual issues in the opinion process. *See* Open Records Decision 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). We therefore must rely on a governmental body's representations with regard to such issues, unless the contrary is clearly shown as a matter of law. *See* Open Records Decision No. 564 (1990). Based upon the department's representation that the information at issue relates to a pending prosecution, we conclude that the release of the photographs would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we conclude that Exhibit F may be withheld pursuant to section 552.108(a)(1).

In summary, the department must continue to rely on our decisions in Open Records Letter No. 2005-06866 with respect to the requested forensic reports and Open Records Letter No. 2005-08752 with respect to the information submitted as Exhibits C, D, and E. The department may withhold Exhibit F under section 552.108(a)(1) of the Government Code. As we reach these conclusions, we need not address your remaining 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 ten 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 235280

Enc. Submitted documents

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(w/o enclosures)