



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2007

Mr. Brandon Hall
City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78561

OR2007-16793

Dear Mr. Hall:

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# 299812.

The Harlingen Police Department (the "department") received two requests for information pertaining to the death of a named individual. The first request is for (1) the deceased individual's purse, medications, and other belongings, (2) an inventory of the confiscated materials, and (3) "all reports such as autopsy, pathology, toxicology, letter or documentation of final cause of death." The second request is for the autopsy and toxicology reports pertaining to the individual. You indicate that the department has released the requested inventory and other items to the first requestor. You also state that the department does not have any responsive autopsy, pathology, or toxicology reports.¹ You claim that some of the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim. We have also considered comments submitted by one of the requestors. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.-San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

The Act applies to “public information,” which is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body, and the governmental body owns the information or has a right of access to it. *See id.* § 552.002. This office has ruled that tangible physical items are not “information,” as that term is contemplated under the Act. *See, e.g.,* Open Records Decision No. 581 (1990). You indicate that the information at issue consists of tangible physical items, including drugs, medications, mail, and fingernail clippings. Thus, we conclude that the requested tangible physical items are not public information, as that term is defined in section 552.002 of the Government Code; therefore, the department is not required to release those items in response to this request. *See* Gov’t Code §§ 552.002, 552.021. As our ruling is dispositive, we do not address your arguments to withhold the information at issue.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 299812

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