



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2008

Ms. Patricia E. Carls
Carls, McDonald & Dalrymple, L.L.P.
901 South Mopac Expressway
Barton Oaks Plaza 2, Suite 500
Austin, Texas 78746

OR2008-07229

Dear Ms. Carls:

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# 311128.

The Georgetown Police Department (the "department"), which you represent, received a request for the dash camera video and all reports regarding traffic stops at a specific intersection by a named officer on a certain day. You state that the department has no responsive traffic stop reports.¹ You also state that the department no longer possesses the dash camera video. You raise sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the arguments you make and reviewed the submitted information.

Initially, we note that the submitted information is not responsive to the instant request. In part, the request seeks all traffic stop reports from a specific intersection by a named officer on a certain day. However, the submitted information pertains to motorist assistance at a different intersection than the one requested. Accordingly, the submitted information is not responsive to the request. The department need not release non-responsive information in response to this request and this ruling will not address that information. *See Bustamante*, 562 S.W.2d at 268.

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

You also contend that the dash camera video is not in the department's possession and is unavailable for the department to produce in response to the present request. We note that the Act generally does not require a governmental body to obtain information not in its possession. *See* Open Records Decision Nos. 558 at 2 (1990) (Act not applicable if governmental body does not have right of access to or ownership of information prepared for it by an outside entity), 445 at 2 (Act not applicable to information that governmental body never possessed or was entitled to receive). However, in addition to encompassing information in the physical possession of a governmental body, the Act applies to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body and the governmental body has a right of access to it. Gov't Code § 552.002(a)(2); *see also* Open Records Decision No. 462 at 4 (1987) (Act applies to information in possession of consultant acting as agent of governmental body). Thus, the Act does not require a governmental body to release information if the governmental body that receives the request has neither possession of the information nor a right of access to it. *See* Open Records Decision Nos. 534 at 2-3 (1989), 518 at 2-3 (1989). In this case, you state that the department released the dash camera video to the Williamson County District Attorney's Office (the "district attorney") pursuant to a grand jury subpoena. Thus, you state that the department no longer has physical possession of this video. Furthermore, you state that the district attorney has denied the department access to the dash camera video because the video is evidence in an ongoing grand jury investigation. Thus, based on your representations, we determine the department does not have a right of access to requested dash camera video. We therefore conclude that the dash camera video is not subject to disclosure under the Act, and that the department need not further respond to the present request. Based on this finding, we do not reach your claimed exceptions to disclosure.

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

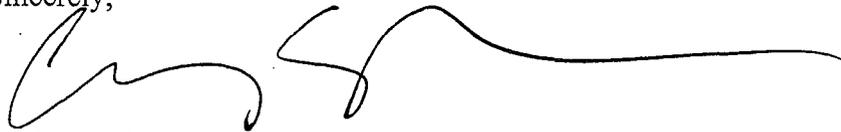
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/mcf

Ref: ID# 311128

Enc. Submitted documents

c: Ms. Isadora Vail
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(w/o enclosures)