



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2008

Mr. David M. Swope
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2008-08111

Dear Mr. Swope:

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# 312875.

The Harris County Human Resource and Risk Management Department (the "department") received two requests from the same requestor for information pertaining to an investigation regarding a grievance filed by the requestor. You state that some of the requested information has been released to the requestor. You further state that the department does not have information responsive to a portion of the second request.¹ The department claims that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. See Gov't Code § 552.304 (interested party may submit written comments concerning availability of requested information).

Initially, we note that portions the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-06665 (2008). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in this prior ruling, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on Open Records Letter No. 2008-06665 as a previous determination and withhold or release the identical information in accordance with that ruling. See Open Records Decision No. 673 (2001) (so

¹We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent that the submitted information is not encompassed by the previous ruling, we will address the submitted arguments.

Next, we note that the remaining submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Upon review, we find that the remaining submitted information is part of a concluded investigation made by the department and, thus, is subject to section 552.022(a)(1). Accordingly, the department must release the information subject to section 552.022 unless it is excepted from disclosure under section 552.108 or expressly confidential under other law. You claim that the remaining information is excepted under section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the department may not withhold the remaining information under section 552.103.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2008-06665, the department may continue to rely on this ruling as a previous determination for that information and withhold or release it in accordance with that ruling. As you raise no further exceptions to disclosure, the department must release the remaining submitted information, which is subject to section 552.022(a)(1), to the requestor.

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,



Jennifer L. Luttral
Assistant Attorney General
Open Records Division

JLU/eeg

Ref: ID# 312875

Enc. Submitted documents

c: Ms. Tammy Bowles
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(w/o enclosures)