



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2008

Mr. Herbierto Morales, Jr.  
Langley & Banack  
401 Quarry Street  
Eagle Pass, Texas 78852

OR2008-17113

Dear Mr. Morales:

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# 331958.

The Eagle Pass Police Department (the "department") received a request for twelve categories of information regarding an incident involving a named individual.<sup>1</sup> You state you have released some of the requested information. You state the department does not have information responsive to a portion of the request. 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 or to create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.— San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the submitted information was at issue in a previous ruling issued by this office, Open Records Letter No. 2008-16691 (2008). It does not appear that the pertinent facts and circumstances have changed since the issuance of that prior ruling. Thus, we determine that the department must continue to rely on our ruling in Open Records Letter

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<sup>1</sup>As you have not submitted the original request for information, we take our description from your brief.

No. 2008-16691 as a previous determination and withhold or release the information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 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); 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; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

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). If the governmental body does not file suit over 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).

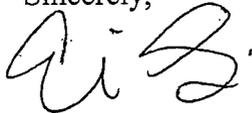
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in cursive script, appearing to read 'E. Sitton'.

Emily Sitton  
Assistant Attorney General  
Open Records Division

EBS/eeg

Ref: ID# 331958

Enc. Submitted documents

c: Requestor  
(w/o enclosures)