



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 29, 1994

Ms. Helen M. Gros
Senior Assistant City Attorney
City of Houston Legal Dept.
P.O. Box 1562
Houston, Texas 77251-1562

OR94-510

Dear Ms. Gros:

Ms. Gretchen Kuehn Bohnert asked whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. This request was assigned ID# 25189.

The City of Houston (the "city") has received a request for information relating to an arson investigation. Ms. Bohnert stated that the city will supply the requestor with some of the requested information, but that the remaining information is excepted from required public disclosure under sections 552.103 and 552.108.

Section 552.301(a) of the act requires a governmental body that receives a request for information to request an open records ruling from this office within ten calendar days. If the governmental body does not request a ruling within that time, the information is presumed to be open to the public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). This presumption can be overcome only by a showing that the information is confidential under some other source of law or that third-party interests are at stake. See Open Records Decision Nos. 586 (1991); 150 (1977).

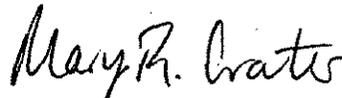
Ms. Bohnert stated that the city received this request for information on February 7, 1994, but that the city's legal department did not receive it until February 23, 1994. The fact that the legal department received the request some time after the city received it is irrelevant. The ten-day period must be calculated from February 7, 1994, the date the governmental body received the request. See Gov't Code § 552.301. The city's request

for a ruling is dated March 10, 1994, three weeks after the expiration of the ten-day deadline. Ms. Bohnert did not submit the requested information to this office. Therefore, we have no basis for concluding that any of the requested information is confidential under some other source of law. Furthermore, section 552.103 and section 552.108 protect governmental interests, not the interests of third parties. See Open Records Decision Nos. 586 (1991) (requiring compelling demonstration to overcome failure to raise section 552.108 within the ten-day deadline); 542 (1990) (section 552.103 protects governmental interests).

With respect to the city's failure to meet the ten-day deadline, Ms. Bohnert stated: "Although this response is late, due to the seriousness of the subject matter, and the fact that the City's legal position would be severely compromised if these documents were turned over to [the requestor] should he seek postconviction relief, the City respectfully requests that you consider this response even though it is untimely." Ms. Bohnert did not demonstrate that the requested information is confidential under some other source of law or that third-party interests would be affected by its release. Thus, the city has not demonstrated a compelling interest that would overcome the presumption of openness arising from the city's failure to comply with the ten-day deadline. Therefore, the information may not be excepted from required public disclosure under the act and must be released.¹

If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/MAR/rho

Ref.: ID# 25189

cc: Mr. Cyrus W. Moore, Jr.
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¹The city must not release information which is confidential under law. To the extent that the records contain private information about the requestor, we note that he has a special right of access to private information about himself. See Gov't Code § 552.023.