



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 11, 1995

Ms. Detra G. Hill
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
501 Police & Courts Building
Dallas, Texas 75201

OR95-549

Dear Ms. Hill:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28271.

The Dallas Police Department (the "department") received an open records request for all of its records pertaining to its investigation of a murder that resulted from an attempted car jacking. You contend the requested records come under the protection of sections 552.101 and 552.108 of the Government Code.

As a threshold question, we first address whether you requested an open records decision regarding these records in a timely manner. Section 552.301(a) of the Government Code provides:

A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision within a reasonable time *but not later than the 10th calendar day after the date of receiving the written request.* [Footnote omitted, emphasis added.]

Further, if a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ) (where ten-day deadline is not met, governmental body must show "compelling interest" to withhold information in order to overcome presumption of openness). The department received the instant open records request on August 3, 1994. You did not request an open records decision from this office until August 15, 1994. Thus, you did not request a decision from this office within ten calendar days of the department's receipt of the request.

In 1993, as part of the state's continuing statutory revision program, the Seventy-third Legislature codified the Open Records Act as chapter 552 of the Government Code, repealing former article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, §§ 1, 46, at 988. Although the codification of the Open Records Act in the Government Code was a nonsubstantive revision, *id.* § 47, the ten-day deadline imposed by section 552.301(a) of the Government Code must now be construed in accordance with the Code Construction Act, chapter 311 of the Government Code, rather than chapter 312 of the Government Code, which governs the construction rules for civil statutes. *See* Gov't Code § 311.002(1) (Code Construction Act applies to "each code enacted by the 60th or a subsequent legislature as part of the state's continuing statutory revision program).

Section 311.014 of the Government Code, which governs the manner in which the ten-day deadline established under section 552.301(a) is to be computed, provides in pertinent part:

- (a) In computing a period of days, the first day is excluded and the last day is included.
- (b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

In this instance the tenth calendar day fell on August 13, 1994, a Saturday. The next day that was "not a Saturday, Sunday, or legal holiday" was August 15, 1994, the day on which you requested an open records decision. Consequently, we deem your request for an open records decision as being made in a timely manner.¹

We now proceed to your arguments for withholding the requested information from the public. Section 552.108 of the Government Code, known as the "law enforcement" exception, excepts the following information from required public disclosure:

¹We therefore need not consider whether your "compelling arguments" are sufficient to overcome the presumption of openness.

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

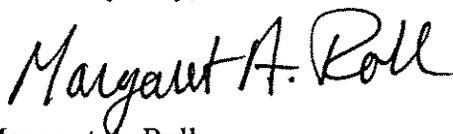
(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986).

You have submitted to this office for review witness statements, photographs, and various other records reflecting evidence that the department has gathered during the course of its investigation of the murder. Evidence of a crime is presumptively excepted by section 552.108 during the pendency of an investigation and prior to prosecution. Attorney General Opinion MW-446 (1982) (and authorities cited therein). Because the department's investigation is currently pending, the department may withhold the requested records from the public at this time pursuant to section 552.108.²

Because we resolve your request under section 552.108, we need not consider your section 552.101 claims. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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²We assume, of course, that the department has released to the requestor all of the public information regarding the offense to which he is entitled under *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). If it has not, it must do so at this time. We also note that among the records you submitted to this office is a copy of a Crimestoppers flyer previously distributed to the public. Because of the prior release of this document, it must also be released to the requestor at this time. See Gov't Code § 552.007.

Ref.: ID# 28271

Enclosures: Submitted documents

cc: Mr. J.D. James
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(w/o enclosures)