



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1995

Ms. Gail Fenter
Assistant City Attorney
The City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR95-1245

Dear Ms. Fenter:

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# 36719.

The City of Midland (the "city") received a request for information concerning complaints filed against a certain city employee. You claim that the responsive information is excepted from required public disclosure under section 552.103 of the Government Code.

Section 552.301 of the Open Records Act provides that a governmental body that receives a written request for information that the governmental body wishes to withhold from public disclosure must request an attorney general decision within ten calendar days of receiving the request for information. Section 552.302 provides that:

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.

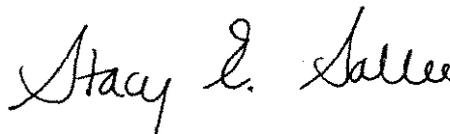
Where requests are not made within ten days, the information is presumed to be public. Open Records Decision No. 319 (1982). A governmental body must show a compelling reason to overcome this presumption, for example, that the information is confidential under some other source of law or that third-party privacy interests are at stake. *Id.*; see *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

A governmental body may not raise additional exceptions after the ten-day deadline, including a request for reconsideration, absent a showing of compelling interest. Open Records Decision No. 515 (1988).

You state and the submitted request letter reflects that the request for information was received by the city on October 5, 1995. The letter from the city requesting an attorney general decision was post-marked October 24, 1995. Accordingly, you did not request a decision from this office within the ten days prescribed by Government Code section 552.301. The requested information is presumed public and discretionary exceptions to disclosure are waived. You may not therefore withhold the requested information under section 552.103 of the Government Code.¹

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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/LBC/rho

Ref: ID# 36719

Enclosures: Submitted documents

cc: Mr. John H. Cook IV
Cook & Cantacuzene, P.C.
306 West Wall Street, Suite 210
Midland, Texas 79701
(w/o enclosures)

¹We note, however, where *another* governmental body has a compelling need to withhold information, that need will prevail, even when the governmental body to whom the request was made fails to comply with the ten-day rule *and* fails to make a compelling demonstration sufficient to overcome the heightened presumption of openness. Open Records Decision No. 586 (1991).