



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1995

Ms. Detra Hill
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR95-1327

Dear Ms. Hill:

You sought an open records decision from this office pursuant to section 552.301, chapter 552 of the Government Code.¹ The requestor sought access to all files, records, and other documents pertaining to a murder investigation that resulted in a capital murder conviction. You asserted that section 552.108 protects the information from disclosure. Your request for a decision was assigned ID# 36496.

Your request to this office for an open records decision was postmarked October 13, 1995. However, you actually received the request for records on August 10, 1995. The Open Records Act imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This

¹We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (to be codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*

presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You assert that there are compelling interests at stake. You submitted an affidavit from the prosecuting attorney stating that although the individual convicted of the murder is in prison, he has made escape attempts and may be continuing his criminal activities while in prison. The prosecuting attorney also stated that this individual has threatened to kill several witnesses and thus the release of witness names, addresses, and telephone numbers could place these witnesses in danger.

You state that the records at issue "are replete with witness information." However, to make its determination of the exception you claim and the compelling interest you assert, this office must review the records at issue. You did not submit to this office the records or representative samples of those records, marked to show which portions you contend are excepted from disclosure, as required under section 552.301(b). We notified you that you were required to provide, within seven days, the applicable documents at issue. We also advised you that failure to comply would result in the presumption that the information at issue is public. Gov't Code 552.303.

Without the information requested from you, this office is unable to evaluate the applicability of the exception and whether there are compelling interests at stake in the information requested. Your failure to comply with the requirements of sections 552.301, 552.302, and 552.303 results in the presumption that the information at issue is public. If you have any questions regarding this matter, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 36496

cc: Mr. James M. Murphy
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