



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 7, 1996

Mr. Robert E. Diaz
Police Legal Advisor
City of Arlington
P.O. Box 1065
Austin, Texas 76004-1065

OR96-0299

Dear Mr. Diaz:

You seek reconsideration of Open Records Letter No. 96-0059 (1996), in which this office determined that the Texas Open Records Act, Government Code chapter 552, required the City of Arlington Police Department (the "department") to make certain information available to the requestor. We have assigned your request for reconsideration ID# 38462.

The department received a request for information on November 2, 1995. On November 10, 1995, we received your request for an attorney general opinion relating to the request for information. In your request for an opinion, you asked whether an offense report on a harassment complaint may be withheld from the suspect pursuant to section 552.108 of the Government Code. Despite the merit of the exception raised you did not, however, submit to our office the requested information that you are required to provide under section 552.301(b).

Pursuant to section 552.303(c), on November 13 and 20, 1995, our office notified you by letter sent *via facsimile* that you had failed to submit the records required by section 552.301(b). In your letter, dated January 25, 1996, you state that you had in fact provided our office with the requested submissions, thereby attempting to explain your failure to comply with the November 13, 1996 request. However, your explanation does not excuse your inadvertence or failure to comply with the November 20, 1996 request for submissions.¹

¹In our letter to you dated November 20, 1996 we stated: "You have **seven days** from the date of receiving this notification to provide this office with the information indicated above. Gov't Code §552.303(d). *Failure to comply with these requirements will result in the legal presumption that any information subject to the open records request and that in any way relates to or is included in this notification is presumed to be public information. Id. § 552.303(e).*" (Emphasis added.)

We have examined your request for reconsideration. Although you have provided us with an explanation letter in an attempt to assert the applicability of section 552.108 by claiming that you complied with the time requirements of the Open Records Act, you have only demonstrated that you did not timely provide our office with the information that was requested in our letters sent *via facsimile* on November 13 and 20, 1995. The notices that were sent and received by your office should have given you sufficient notice and time to comply with the submission of the requested documents. Therefore, as provided by section 552.303(e), the records which are the subject of the request for information are presumed to be public information.

Information presumed public must be released unless the governmental body demonstrates the existence of a *compelling interest* that overcomes this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown compelling reasons why the information at issue should not be released.² Consequently, the information is presumed to be public and must be released. Whether information falls within section 552.108 must be determined on a case-by-case basis. Open Records Decision Nos. 434 (1986) at 2, 287 (1981) at 2. Therefore, we decline to overrule our decision in Open Records Letter No. 96-0059 (1996).

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

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 38462

cc: Mr. Patrick Colvin
4401 Lon Stevenson Road
Fort Worth, Texas 76140
(w/o enclosures)

²If a governmental body does not claim an exception or *fails to show how it applies to the records*, it will ordinarily waive the exception unless the information is made confidential under the Open Records Act. See Attorney General Opinion JM-672 (1987).