



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1996

Ms. Vicki D. Blanton
Assistant City Attorney
Criminal Law and Police Division
Office of the City Attorney
City Hall
Dallas, Texas 75201

OR96-0409

Dear Ms. Blanton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39115.

The City of Dallas (the "city") received a request for information seeking "all correspondence, memorandums, reports, audio and visual recordings, notes on any and all information regarding Internal Affairs control number 95-355A." You assert that the requested information is excepted from required public disclosure under section 552.108 of the Government Code. *See* Open Records Decision Nos. 211 (1978); 141 (1976) (information which would reveal the identity of those engaged in undercover law enforcement may be excepted by section 552.108). You have submitted for our review the documents responsive to the information request.

The Open Records Act imposes a duty on governmental bodies 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 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).

In this instance, the request for information is dated November 17, 1995. You state that the Dallas Police Department received the request for information on November 20, 1995. You sought an open records decision from this office on February 28, 1996.¹ Consequently, you have not met your burden under section 552.301 of the act.

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). *But see* Open Records Decision 586 (1990) (when a governmental body has missed the ten-day deadline, the need of another governmental body to withhold the requested information may provide a compelling reason for nondisclosure).

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

Sincerely,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 39115

Enclosures: Submitted documents

¹ You state that the information requested was not available for your review until the investigation was completed. The Open Records Act applies, however, only to information in existence and does not require a governmental body to prepare new information. Open Records Decision Nos. 605 (1992); 572 (1990); 558 (1990); 555 (1990); 534 (1989); 483 (1987); 430 (1985). The mere fact that an investigation is pending does not necessarily except information from disclosure nor does it relieve a governmental body from seeking an Attorney General decision. A governmental body, however, need only seek to withhold the documents in existence at the time the open records request is made. Consequently, this ruling applies only to information in existence on November 17, 1995; this ruling does not require the release of information created after November 17, 1995.

cc: Ms. Stephanie Pegues
6212 Samuell Blvd. # 284
Dallas, Texas 75228
(w/o enclosures)