



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 24, 1996

Ms. LaRonica K. Lightfoot
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
City Hall
Dallas, Texas 75201

OR96-1265

Dear Ms. Lightfoot:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40613.

The City of Dallas (the "city") received two requests for information, including a copy of its file on a certain sexual assault incident as well as information regarding any incidents at a certain Dallas location. According to the stamp of the city's legal services liaison, the city received the requests on April 19, 1996, and April 22, 1996. You assert that the requested information is excepted from required public disclosure based on section 552.101 and 552.108 of the Government Code. This office received the city's requests for an open records ruling on the two requests on May 10, 1996.

Section 552.301(a) of the Government Code provides that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . 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 and state the exceptions that apply within a reasonable time but not later than the 10th calendar day after the date of receiving the request.* (Emphasis added.)

Since the city received the requests on April 19 and 22, and requested a decision from this office on May 10, the city failed to seek our decision within the ten-day period mandated by section 552.301(a). Because the city did not request an attorney general decision within the deadline provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. A compelling interest exists when the information is made confidential by another source of law or when the release of the information implicates a third party's privacy or property rights.

We do not believe a compelling reason exists to overcome the presumption of openness arising from the city's failure to meet the ten-day deadline. Section 552.108 is designed to protect a governmental body's law enforcement interests, not the interests of a third party. Additionally, as the requestor in this case is the attorney for the victim of the sexual assault, we do not believe the victim's privacy rights are implicated here. Accordingly, the city may not withhold the requested information from the requestor.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 40613

Enclosures: Submitted documents

cc: Ms. Dorothy J. Mulcihy
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(w/o enclosures)