



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 2, 1996

Mr. Tracy A. Ponders
Assistant City Attorney
Office of the City Attorney
City Hall
Dallas, Texas 75201

OR96-1384

Dear Mr. Ponders:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100280.

The City of Dallas (the "city") received a request for "copies of all information in the possession of the city of Dallas related to the Masala Project." You contend that the city may withhold the requested documents from disclosure on behalf of the Dallas County District Attorney's Office (the "district attorney's office") under either section 552.103 or section 552.108 of the Government Code. The district attorney's office has asked the city to withhold the documents from disclosure pursuant to section 552.108.

Section 552.301(b) requires a governmental body to submit to this office (1) general written comments giving the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office copies of the documents that you are seeking to withhold from disclosure on behalf of the district attorney's office.

Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile dated June 17, 1996 that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days after the date you received our notice. The notice further stated that failure to comply with our request would result in the legal presumption that the information at issue is public information. See Gov't Code § 552.303(e).

You did not provide our office with the information that was requested. Therefore, as provided by section 552.303(e), the information that is the subject of the request for information is presumed to be public information. Information that is presumed public must be released unless a 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).

In Open Records Decision No. 586 (1991), we concluded that the need of a governmental body, other than the one that has failed to timely comply with the requirements for requesting an attorney general decision under the Open Records Act, to withhold information from disclosure may be a compelling reason to overcome the presumption that the information is public. The district attorney's office suspects that the requested documents "were forged and contain false information," and, therefore, it "is currently conducting a criminal investigation to determine whether or not anyone has committed the offense of Tampering with Governmental Records." Notwithstanding the fact that the requested documents are presumed to be public in the hands of the city due to the city's failure to provide us with copies of those documents, the district attorney's office has presented us with circumstances that compel us to consider its section 552.108 claim and its request that the city withhold the requested documents on its behalf.¹

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.² *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We therefore conclude that the city may, on behalf of the district attorney's office, withhold the requested documents from disclosure pursuant to section 552.108.

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

¹In addition to providing us with a brief to support its section 552.108 claim, the district attorney's office submitted copies of the requested documents to this office for review.

²The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

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

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 100280

cc: Ms. Glo Dean Baker
Director
The AAP, Inc.
Box 36309
Dallas, Texas 75235
(w/o enclosures)

Mr. John B. Dahill
Assistant District Attorney
Public Integrity Section
Dallas County District Attorney's Office
Frank Crowley Courts Building
Dallas, Texas 75207-4313
(w/ enclosures - submitted documents)