



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 14, 1996

Mr. Robb D. Catalano
Assistant City Attorney
Criminal Law and Police Division
Municipal Building
Dallas, Texas 75201

OR96-1868

Dear Mr. Catalano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101239.

The Dallas Police Department (the "department") received a request for seven categories of information relating to service number 0437296-E. You assert that the requested information is excepted from required public disclosure under section 552.103 of the Government Code. You have submitted for our review the documents responsive to the 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 showing that information is made confidential by another source of law or affects third party interests).

In this instance, the request for information is dated July 1, 1996. You state that the Dallas Police Department received the request for information on July 9, 1996. You sought an open records decision from this office on July 26, 1996. Consequently, you have not met your burden under section 552.301 of the Government Code.

In the absence of a demonstration that the information is confidential by law in this circumstance 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); *but see* Open Records Decision 586 (1991) (when governmental body has missed ten-day deadline, need of another governmental body to withhold requested information may provide compelling reason for nondisclosure). We note that some of the information may be confidential. Thus, if someone other than the subject of this investigation requests the information, the department should reassert its arguments against disclosure at that time. We note in particular that there may be criminal history report information ("CHRI") within the documents. Such information is confidential and must not be released. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, if the records contain CHRI and it falls within the ambit of these state and federal regulations, you must withhold the CHRI from the requestor. *See* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

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.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 101239

Enclosures: Submitted documents

cc: Mr. Richard G. Mills
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(w/o enclosures)