



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 28, 1996

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

OR96-1960

Dear Mr. Diaz:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101772.

The Arlington Police Department (the "department") received an open records request for all of the department's records pertaining to the kidnapping and murder of a sixteen year old girl.<sup>1</sup> The department received the request for information on August 9, 1996. The post mark on the envelope containing your request for an open records decision indicates that you submitted your request to us on August 21, 1996. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to

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<sup>1</sup>We note that this office has previously ruled, at least to a certain extent, on the public nature of the requested documents. See Open Records Letter No. 94-803 (1994). You state that the department has released the records held to be public in that ruling.

withhold the information to overcome this presumption. *See Hancock*, at 381. Although you contend that the requested information is excepted from required public disclosure under sections 552.103 and 552.108 of the Government Code, you have not demonstrated to this office any compelling interest *of the department* for withholding the requested information pursuant to these two exceptions.

This does not, however, end our discussion of whether the requested records must be disclosed. Although a governmental body's failure to timely request an open records decision normally results in the legal presumption that the information is public, *see Gov't Code §§ 552.301-.302*, the department may not waive, through its own inactions, the legitimate interests of another law-enforcement agency in keeping information from the public. *See Open Records Decision No. 586 (1991)*. In this instance you have demonstrated that the United States Attorney's Office continues to have an interest in having the information withheld at this time pursuant to the "law-enforcement exception," section 552.108 of the Government Code.<sup>2</sup> Accordingly, we conclude that the protection of section 552.108 extends to the records at issue until such time that the federal prosecution of this matter is concluded.

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,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/RWP/rho

Ref: ID# 101772

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<sup>2</sup>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*, 924 S.W.2d 920 (Tex. 1996).

Enclosures: Submitted documents

cc: Ms. Wendy Lowy  
524 West 57th Street  
New York, New York 10019  
(w/o enclosures)