



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1997

Mr. Jason C. Marshall
Nichols, Jackson, Dillard, Hager
& Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR97-0208

Dear Mr. Marshall:

You have asked whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 104088.

The City of Coppell (the "city"), which you represent, received a request for certain records in a Coppell Police Department file. You assert that section 552.108 of the Government Code, as interpreted by the Texas Supreme Court in *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996), exempts from disclosure information in this file:

The protection of section 552.108 may be waived by the governmental body if it fails to timely seek a determination from this office as to the applicability of the section 552.108 exception to particular records. Section 552.301(a) provides as follows:

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 exceptions under [Chapter 552] must ask for a decision from the attorney general about whether the information is 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 written request.

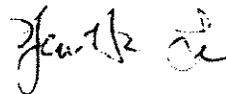
Section 552.302 of the Government Code provides that information "is presumed to be public information" if a request for a decision from the office of the attorney general is not timely sought.

The city received the original request on November 7, 1996. You advise us that, pursuant to section 552.108 and *Holmes*, the city informed the requestor that the requested documents were not subject to public disclosure. After receiving the requestor's second request on November 20, 1996, you sought an open records decision from this office by letter dated December 2, 1996, more than ten days after receipt of the original request. The city is mistaken in its belief that "[s]ince the Supreme Court has previously ruled on the application of the law enforcement exception to the police files, . . . it is unnecessary to seek an opinion" from this office for documents that are related to law enforcement or a criminal investigation. Whether information falls within section 552.108 must be determined on a case-by-case basis. Open Records Decision Nos. 434 (1986) at 2, 287 (1981) at 2. Because we have not made a prior determination with respect to the type of information at issue here, the city must seek a decision from this office if it asserts that the requested records are excepted from disclosure under section 552.108. See Gov't Code § 552.301(a).

As a result of the city's failure to meet its ten-day deadline for requesting an opinion from this office, the requested records are presumed to be public information. 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 Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). In order to overcome this presumption, the governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381. Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. You have not shown compelling reasons why the information should not be released. Consequently, you may not withhold any of the requested information under section 552.108 of the Government Code.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref: ID# 104088

Enclosures: Submitted documents

cc: Mr. Doyle Calfey
449 Harris, C 103
Coppell, Texas 75019
(w/o enclosures)