



Office of the Attorney General

State of Texas

May 19, 1997

DAN MORALES
ATTORNEY GENERAL

Ms. Cathy Cunningham
Senior Assistant City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 75015-2288

OR97-1144

Dear Ms. Cunningham:

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# 105795 and ID# 106887.

The Irving Fire Department (the "department") received several requests for its files pertaining to a particular fire at an apartment complex. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.

You inform this office that you did not seek an open records decision from this office within the initial ten days following the department's receipt of the first open records requests. Chapter 552 of the Government Code 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).

You have not presented this office with a compelling reason for withholding the records at issue.¹ We note, however, that some of the information references the results of

¹Although you have submitted to this office a letter from the Irving Fire Department stating that its investigation of the fire has not concluded, this fact alone is not sufficient to constitute a "compelling reason" for withholding the information at issue. To conclude otherwise would greatly vitiate the purpose of the ten-day deadline with regard to law-enforcement records.

a polygraph examination. Section 19A of article 4413(29cc), V.T.C.S., which governs the release of polygraph examinations, provides in pertinent part:

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person . . . or governmental agency that requested the examination;
- (3) members or their agents of governmental agencies such as federal, state, county, or municipal agencies that license, supervise, or control the activities of polygraph examiners;
- (4) other polygraph examiners in private consultation, all of whom will adhere to this section; or
- (5) others as may be required by due process of law.

(d) A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

(e) *The board or any other governmental agency that acquires information from a polygraph examination under Subdivision (3) of Subsection (c) of this section shall keep the information confidential.*

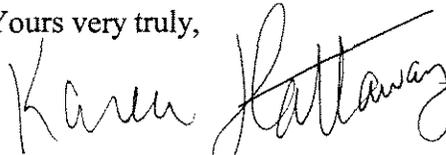
Consequently, the department is barred by statute from releasing the results of the polygraph examination to the requestors. *See also* Open Records Decision No. 430 (1985). We have marked the information that the department must withhold pursuant to section 19A of article 4413(29cc).

In the absence of a demonstration that any other information is confidential by law or that other compelling reasons exist as to why the information should not be made public, the department must release the remaining information. *See also* Gov't Code § 552.352 (distribution of confidential information is 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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/ch

Ref.: ID# 105795 and ID# 106887

Enclosures: Submitted documents

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