



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 19, 1998

Mr. Robert J. Gervais
Assistant City Attorney
City of Galveston
Legal Department
P.O. Box 779
Galveston, Texas 77553-0779

OR98-0489

Dear Mr. Gervais:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112731.

The City of Galveston (the "city") received a request for various information. You seek to withhold from disclosure

(3) Any and all taped radio communications during said time on said dates. Including but not limited to audio tapes of PD Channels 1,2,4 as well as that of the communication center itself.

(4) Any and all video and audio tapes both inside and outside of the police station during said times on said dates.

...

(6) Any and all request for warrant and wanted information via phone to dispatch as well as via MDT and any and all DI or ID checks, local, county, DPS, T.C.I.C. or N.C.I.C. via any terminals accessed during said time of said dates.

You assert that this information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

However, you did not submit to this office copies of the information requested, including the audio and video tapes, or representative samples of that information. Section

552.301(a) of the Government Code provides that “[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 to disclosure” must ask this office for a decision and state the exceptions that apply. Section 552.301(b) provides that when the governmental body requests a decision from this office, the governmental body must provide to this office (1) general written comments stating 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.

In accordance with 552.303(c) of the Government Code, this office notified you by facsimile on January 29, 1998, that you had failed to submit a copy of the specific information requested or a representative sample of the records, as required by section 552.301(b). We requested that you provide a copy of the information requested or a representative sample to our office within seven days from the date of receipt of the facsimile notice. The notice further stated that, pursuant to section 552.303(e), failure to supply this information would result in the legal presumption that the information at issue is public.

Since you have failed to supply the information needed for this office to render a decision, as provided under section 552.303(e), the information that is the subject of this request for information is presumed to be public information. This presumption of openness can be overcome only by a demonstration that the information at issue is confidential by law or that other compelling reasons exist as to why the information should not be made public. *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); *see also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

However, we note that section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 411.083(a) of the Government Code provides that criminal history record information (“CHRI”) maintained by the city is confidential. Section 411.083(b) provides that the department shall grant access to criminal history record information to various persons and entities. In the requests at issue, however, the requester does not fall within any of the provisions of section 411.083(b) that provide for access to CHRI. The request does not appear to have been made by an authorized representative of the subject of the CHRI. Thus, in the situation at hand, although the city did not provide a copy of the specific information requested, or a representative sample of the information, the city must withhold any responsive CHRI. The city must exercise caution before releasing any other confidential information. *See* Gov't Code § 552.352 (providing penalties for improper release of confidential information).

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,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', written over a horizontal line.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/alg

Ref.: ID# 112731

cc: Mr. Daryl W. Mardis
723 Avenue H
Galveston, Texas 77550