



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1998

Ms. Portia Poindexter
First Assistant
Fort Bend County
301 Jackson, Ste. 621
Richmond, Texas 77469-3108

OR98-2175

Dear Ms. Poindexter:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117959.

The Fort Bend County Sheriff's Department (the "Sheriff") received a request for its records concerning the drowning of a child. The request is from an investigator for a firm retained by the parents of the child. You state that the Sheriff may withhold the requested information from the requestor based on section 552.108 of the Government Code. You did not, however, submit to our office certain information that is required to be submitted to our office under section 552.301(b). Specifically, you did not submit written comments explaining the reasons why you maintain that section 552.108 applies to the requested information.

Pursuant to section 552.303(c) of the Government Code, on July 3, 1998, our office notified you by letter sent via facsimile that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e), failure to comply would result in the legal presumption that the requested information is public information.

You did not timely provide our office with the information that was requested in our July 3, 1998 notice to you. Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin

Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *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). You have not shown compelling reasons why the information at issue should not be released.

We note that the submitted information includes a medical record made confidential under the Medical Practices Act (the "MPA"). V.T.C.S. art. 4495b, § 5.08(b). However, the MPA permits the disclosure of confidential medical records to "any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for the release of confidential information." *Id.* § 5.08(h)(5); *see also id.* § 5.08 (j) (containing requirements for valid consent for release of medical records). Thus, if the requestor provides a valid consent, the Sheriff must release the medical record to the requestor. Additionally, the Sheriff must release the remaining information at issue to the requestor.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/mjc

Ref.: ID# 117959

Enclosures: Submitted documents

Ms. Portia Poindexter - Page 3

cc: Mr. James Dunbar
Information Bank of Texas, Inc.
111 West 14th. Street
Houston, Texas 77008
(w/o enclosures)