



March 29, 1999

Mr. Michael J. Bostic
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
Municipal Building
Dallas, Texas 75201

OR99-0854

Dear Mr. Bostic:

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# 123311.

The Dallas Police Department (the "department") received a request for a police report concerning a homicide that occurred on August 28, 1998. You assert that the requested information is excepted from public disclosure by section 552.108 of the Government Code.

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 act's exceptions must ask for a decision from the attorney general and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the request. Pursuant to section 552.301(b), a governmental body is required to submit 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. A copy of the written request permits the attorney general to determine from the date of receipt whether the ten-day deadline was met. Although you have submitted the written request for information, it does not indicate and you have provided no information showing when the department received the request for information.

Pursuant to section 552.303(c) of the Government Code, this office notified you by letter facsimile dated February 23, 1999, that you "must provide information showing when the city actually received the request for information." 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 information at issue was presumed public.

You responded by stating that “[n]o file date appears on request.” Consequently, we find that you have not provided this office with information showing that you have met the ten-day deadline. Because you have not complied with section 552.301(a), the requested information is presumed to be public. Open Records Decision No. 195 (1978). 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 such a compelling interest to overcome the presumption that the information at issue is public. Thus, you must release the requested 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.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 123311

Enclosures: Submitted documents

cc: T. McGilvery-Humphrey
6942 Atha Drive
Dallas, Texas 75217
(w/o enclosures)