



December 14, 1999

Ms. Dianne Eagleton  
Supervisor, Records Division  
North Richland Hills Police Department  
Post Office Box 820609  
North Richland Hills, Texas 76182-0609

OR99-3627

Dear Ms. Eagleton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 131062.

The North Richland Hills Police Department (the “department”) received a request for any and all arrest records pertaining to a named individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code and the common-law right of privacy.

Section 552.301 of the Government Code provides in relevant part:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that is considers to be within one of the exceptions under Subchapter C [of chapter 552 of the Government Code] must ask for a decision from the attorney general about whether the information is within that exception[.]

(b) The governmental body must ask for the attorney general’s decision and state the exceptions that apply . . . not later than the 10<sup>th</sup> business day after the date of receiving the requestor’s written request.

....

(e) A governmental body that requests an attorney general decision under Subsection (a) must . . . not later than the 15<sup>th</sup> business day after the date of receiving the written request:

(1) submit to the attorney general:

...

(D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]

Section 552.302 of the Government Code provides in relevant part that “[i]f a governmental body does not request an attorney general decision as provided by section 552.301 . . . the information requested . . . is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.”

In this instance, the department has failed to comply with section 552.301 of the Government Code by failing to request a decision within ten business days of its receipt of the request for information and by failing to provide this office with copies or representative samples of the requested information within fifteen business days of its receipt of the request. Pursuant to section 552.302 of the Government Code, the requested information is therefore presumed to be subject to public disclosure unless the department has demonstrated a compelling reason to withhold it. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ) (under statutory predecessor to section 552.302, governmental body must make compelling demonstration of reasons why information should not be made public to overcome presumption of openness); Open Records Decision No. 319 (1982). Your invocation of section 552.108 does not provide a compelling reason sufficient to overcome the presumption of openness. See Open Records Decision No. 586 (1991). Furthermore, without the requested information, we are unable to rule on the merits of your claims. Consequently, the department must release the requested information. We caution you, however, that chapter 552 of the Government Code prescribes criminal penalties for the release of confidential information. See Gov’t Code § 552.352.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

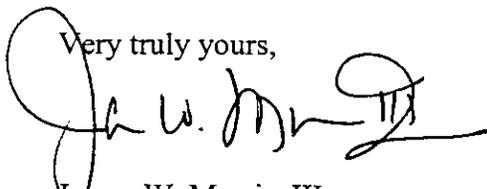
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Very truly yours,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cwt

Ref: ID# 131062

cc: Mr. W. A. Blessing  
Post Office Box 14929  
Fort Worth, Texas 76117-0929