OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

August 17, 2000

Mr. Mark Taylor
City Attorney
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

OR2000-3145

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 138395.

The San Marcos Police Department (the "department") received a request for "copies of any records relating to the death of Alexander Windle in Hays county on or about May 24, 1999." You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You have failed to submit to this office a copy of the written request for information. Pursuant to section 552.301(e)(1)(B), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. Pursuant to section 552.302 of the Government Code, if a governmental body does not request an attorney general decision as provided by section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. *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. The exceptions to disclosure you claim, sections 552.103 and 552.108, do not provide compelling reasons for withholding the information. *See, e.g.*, Open Records Decision Nos. 473 (1987) (section 552.103 is not compelling reason to overcome presumption of openness), 150 (1977) ("compelling reason" for withholding information is if information is made confidential by another source of law or affects third party interests). Accordingly, you must release the requested information.

This letter ruling is limited to the particular records at issue in this request and 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).

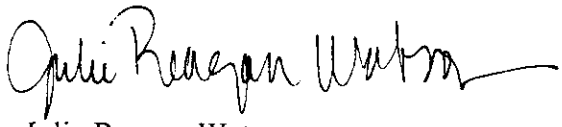
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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.

Sincerely,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 138395

Encl. Submitted documents

cc: Mr. James Rodman
2003 North Lamar, Suite 100
Austin, Texas 138395
(w/o enclosures)