



February 4, 2002

Ms. Kelly Ripley
Records Management Coordinator
Irving Police Department
305 N. O'Connor Road
Irving, Texas 75061

OR2002-0516

Dear Ms. Ripley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158103.

The Irving Police Department (the "department") received a request for information relating to burglaries that occurred between October 29, 2001, and November 4, 2001. Specifically, the requestor seeks the name, telephone number, and address of the complainants in those burglary cases. You seek to withhold the requested information under section 38.18 of the Penal Code and section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that subsections 552.301(a) and (b) provide:

(a) 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 about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state the department received the request for information on November 5, 2001. Thus, the deadline for the department to submit a request for a decision to this office was November 19, 2001. Although the department's letter requesting a decision is dated November 6, 2001, our records indicate that the letter was postmarked on November 20,

2001. *See* Gov't Code § 552.308(a)(1) (stating that information is timely if it bears post office cancellation mark indicating time within prescribed period). Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, the department must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). You assert section 38.18 of the Penal Code and section 552.108 of the Government Code. We note that you did not timely raise your claim under section 38.18. Since section 38.18 is not a confidentiality statute and it does not protect third party interests, we find that you have waived your arguments under this provision. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Furthermore, you have not demonstrated a compelling reason under section 552.108 of the Government Code to overcome the presumption of openness. *See e.g.*, Open Records Decision No. 586 (1991) (need of another governmental body to withhold information may provide compelling reason for nondisclosure). Accordingly, you must release the requested information.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 158103

Enc: Submitted documents

c: Mr. Bill Fawcett
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(w/o enclosures)