



April 30, 2002

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2002-2235

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162818.

The City of Conroe Police Department (the "department") received a request for copies of autopsy reports and supplemental autopsy reports pertaining to a specified person, as well as copies of all photographs taken by or in the possession of the department pertaining to the investigation of a specified accident. You state that the department does not maintain any information that would be responsive to the portion of the request pertaining to autopsies.¹ You claim, however, that the submitted photographs are excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted photographs.

We note that section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov't Code § 552.301(b)*. You state that the department received the written request for information on February 20, 2002. Therefore, the department had until

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See Gov't Code §§ 552.002, .021, .227, .351*. The Act does not require a governmental body to prepare new information in response to a request. *See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990)*. A governmental body must only make a good faith effort to relate a request to information which it holds. *See Open Records Decision No. 561 at 8 (1990)*.

March 6, 2002 to request a decision from our office regarding the requested information. However, the department did not request a decision concerning the photographs until March 7, 2001, more than ten business days after the date that the department received the request. Accordingly, we conclude that the department failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b).

Because the department failed to request a decision within ten business days of receiving the request, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The department must demonstrate a compelling interest to withhold the information in order to overcome this presumption. *See id.* Normally, a governmental body demonstrates a compelling interest by showing that some other source of law makes the information confidential or that the release of the requested information implicates third party interests. *See* Open Records Decision No. 150 at 2 (1977). Although the department claims that the photographs are excepted from disclosure under section 552.108 of the Government Code, we find that the department has not demonstrated a compelling interest under section 552.108 for withholding the photographs from disclosure. *See* Open Records Decision No. 586 (1991) (stating that need of governmental body, other than one that received written request, may constitute compelling reason to overcome presumption that information is public). Accordingly, the department may not withhold the photographs from disclosure under section 552.108 of the Government Code. Consequently, the department must release the photographs to the requestor.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 162818

Enc. Submitted photographs

cc: Ms. Sherry Scott Chandler
The Hall Law Firm, L.L.P.
4310 Yoakum Boulevard
Houston, Texas 77006
(w/o enclosures)