



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 31, 1992

Mr. T. A. Pounders  
Assistant City Attorney  
City of Dallas  
Office of the City Attorney  
City Hall  
Dallas, Texas 75201

VIA  
FACSIMILE  
AND  
FIRST CLASS MAIL

OR92-684

Dear Mr. Pounders:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17446.

The Dallas Police Department (the "department") has received a request for information relating to a shooting incident that occurred December 11, 1991. Specifically, the requestor seeks "all Dallas Police Department files, reports, and documents--including all Internal Affairs Division reports--pertaining to the Dec. 11, 1991, shooting of Detective Larry Bromley by Sgt. Brent Wilson and Detectives Tim Smith and R.L. Baird." You claim that the requested information is excepted from required public disclosure under section 3(a) of the Open Records Act.

As a threshold issue, we must determine whether you timely requested an opinion of this office in accordance with section 7(a) of the Open Records Act. Section 7(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. You received the request for information under the Open Records Act on July 27, 1992. We received your request for a decision in a letter postmarked September 25, 1992. Consequently, you failed to request a decision within the ten days required by section 7(a) of the act.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. See *id.* Normally, the presumption of openness can be overcome only by a compelling

demonstration that the information should not be released to the public, *i.e.*, that the information is deemed confidential by some other source of law or that third party interests are at stake. Open Records Decision No. 150 (1977); *see also* Open Records Decision No. 586 (1991) (law enforcement interest of third party may be compelling).

You advise us that the department relied on a previous determination of this office in withholding the requested information from public disclosure. Section 7(a) of the Open Records Act provides, in pertinent part:

If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, *but there has been no previous determination that it falls within one of the exceptions*, the governmental body . . . must request a decision from the attorney general to determine whether the information is within that exception. [Emphasis added.]

In *Houston Chronicle Publishing Co. v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989), the Texas Supreme Court construed section 7 of the Open Records Act, holding:

Section 7 requires the Attorney General to render a decision only if there has been no previous determination that the requested information falls within one of the exceptions to the Open Records Act. The Act does not require a previous determination on the specific piece of information; it allows the Attorney General to explicitly refuse to render a decision if he decides that a previous determination has been made regarding the *category of information to which the request belongs*. [Emphasis added.]

You advise us that the department relied on Open Records Letter OR89-002 (1989) in withholding the information at issue here from public disclosure. In that ruling, this office relied on a previous ruling, Open Records Letter OR88-064 (1988), holding that the Dallas Police Department would need to request an attorney general opinion regarding release of internal affairs investigation files "only if the requestor contests your withholding of information you believe is exempt from required public disclosure." Here, the requestor has contested non-disclosure of information, thus, a timely request for information should have been made. We cannot regard your interpretation of Open Records Letter 88-064 as a compelling demonstration that the information should not be released to the public. When in doubt, a governmental body is clearly advised to make a timely request for an attorney general ruling, as the Open Records Act dictates that doubt should be resolved in favor of openness. As you have not otherwise demonstrated why the requested information should not be made available to the public, we conclude that you have not made a compelling demonstration that overcomes the presumption of openness arising from your failure to timely request an opinion of this office under section 7(a) of the Open Records Act. Accordingly, the requested information must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-684.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SLG/GCK/Imm

Ref: ID# 17446

Enclosure: Open Records Decision No. 597

cc: Mr. Robert Wilonsky  
The Observer  
3211 Irving Boulevard  
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