



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1994

Ms. Detra Hill
Assistant City Attorney
Supervisor, Criminal and Police Division
Office of the City Attorney
City Hall
Dallas, Texas 75201

OR94-448

Dear Ms. Hill:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26137.

The City of Dallas (the "city") has received a request for information in the city police department's possession relating to a certain person. You advise us that the requestor seeks "criminal records, police reports, and arrest reports of one Derek Andrie Haggerty." You have submitted the requested information to us for review and claim that the city may withhold it from required public disclosure under the Open Records Act.

Section 552.301(a) of the Government Code provides:

A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C 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. The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.

Section 552.302 provides:

If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information.

You advise us that the city, through its police department, received the open records request on April 14, 1994. You further advise that the police department forwarded the request to the city attorney's office on April 22, 1994. Although you had two days remaining within the ten days section 552.301(a) requires to ask this office for a decision, you chose to wait ten days from the day the city attorney's office received the open records request, and you asked on May 2, 1994, for a determination from this office. On the basis of these facts, we conclude that the city failed to request a decision within the ten day period section 552.301(a) of the Government Code mandates. *See generally* Open Records Decision No. 497 (1988) (holding that Open Records Act places implicit duty on chief administrative officers to instruct their subordinates about compliance with the Open Records 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, 381 (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) at 1-2. The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See Hancock*, 797 S.W.2d at 381. Normally, a governmental body can overcome the presumption of openness by a compelling demonstration that the governmental body should not release the requested information to the public, *i.e.*, that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. You seek to withhold the requested information under section 552.108 of the Government Code, claiming that its release would compromise an ongoing investigation of the city police department. Having reviewed the requested information, however, we conclude that no source of law makes it confidential and that it implicates no third party interests. The law enforcement interests normally protected by section 552.108 are not by themselves sufficient to establish a compelling reason to withhold the information. *See* Open Records Decision No. 444 (1986) at 4-5. Accordingly, the city must promptly make the requested information available to the requestor 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 contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref.: ID# 26137

Enclosures: Submitted documents

cc: Mr. Charles U. Maduka
Maduka & Associates, P.C.
9502 Webb Chapel Road, Suite 203
Dallas, Texas 75220
(w/o enclosures)