



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Mr. Michael R. Davis
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR95-864

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33335.

The Texas Department of Public Safety (the "department") received a request for three categories of documents relating to Gary Michael Smith, an inmate who died in the Williamson County Jail. You claim that one of the documents requested is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code.

It appears from the documents submitted to this office that the department received the request for information under the Open Records Act on March 21, 1995. You did not request a decision from this office until April 28, 1995. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

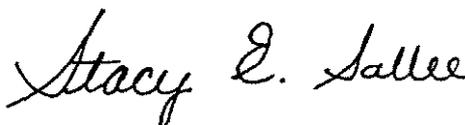
Sections 552.301 and 552.302 of the Government Code require a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request 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 interest to withhold the information to overcome this presumption. *See id.*

You state that at the time the request was received, March 21, 1995, the case was closed. A governmental body has a duty to provide requested information "promptly." Gov't Code § 552.221(a). Despite the fact that the department received the request on March 21, 1995, and the responsive document is not lengthy, the department did not release the requested information prior to seeking an opinion from this office. See Open Records Decision No. 467 (1987) ("promptly produce public information" means a reasonable amount of time and volume of information requested highly relevant). You state that on April 6, 1995, the case was re-opened based on new evidence. You did not request a decision from this office until April 28, 1995, 22 days later. We therefore conclude that the department has failed to request a decision from this office within the ten days required by the Open Records Act.

Additionally, we conclude that the department has not demonstrated a compelling interest in withholding the information. See Open Records Decision Nos. 473 (1987) (sections 552.103 and 552.111 waived by failure to meet ten-day deadline).¹ You have not demonstrated that release of the information would unduly interfere with law enforcement under section 552.108. Therefore, the department may not withhold the requested information.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Government Section

SES/RHS/rho

Ref.: ID# 33335

¹It is not apparent to this office that your section 552.103 or 552.111 arguments would have been persuasive in any event.

²In your request, you mention information prepared in connection with the re-opened investigation. We note that information that is not in existence at the time a request is received is not subject to the request. Open Records Decision No. 476 (1987), 452 (1986).

Enclosures: Submitted documents

cc: Mr. or Ms. Terry R. Parker
Legal Assistant
Storey Armstrong Steger & Martin, P.C.
4600 Fountain Place
1445 Ross Avenue
Dallas, Texas 75202-2782
(w/o enclosures)