



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 14, 1995

The Honorable Daniel C. Rice  
District Attorney  
Montgomery County  
301 North Thompson, Suite 106  
Conroe, Texas 77301-2824

OR95-1420

Dear Mr. Rice:

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# 32932.

Your office received an open records request for fourteen of your prosecution files. You state that "in the interest of justice in a death penalty case" you have allowed the requestor of these records to both review and have copies of some of the information in each of the requested files; consequently, your request for an open records decision regarding those records is now moot. You contend that the remaining information may be withheld from the requestor pursuant to sections 552.101, 552.103, and 552.108 of the Government Code.<sup>1</sup>

As a threshold matter, we note that on April 11, 1995, this office notified you of your failure to submit to us the records you seek to withhold, with the caveat that your failure to do so would result in waiver of the Open Records Act's discretionary exceptions. Additionally, in a telephone conversation of May 1, 1995, a member of our staff informed Ms. Gail McConnell, assistant district attorney, that this office must review, at a minimum, a representative sample of the requested records in order to render

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<sup>1</sup>In your most recent and previous correspondence to this office you have also raised other questions regarding the interplay between the rules of criminal discovery and the Open Records Act and have requested an attorney general opinion regarding these matters. This office will address these concerns in a subsequent opinion.

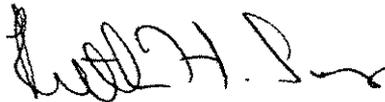
a ruling on this open records request. Despite our repeated requests, you have not submitted copies of the requested documents (or a representative sample thereof) to this office for review.

When a governmental body refuses to submit to this office copies of requested records it wishes to withhold, the information is presumed to be public. *See* Open Records Decision No. 197 (1978) at 1-2. This presumption can be overcome only by a compelling demonstration that the information should not be released, such as where the information is specifically made confidential by statutory or common law. Open Records Decision No. 150 (1977) at 2.

Because you have refused to submit the records to this office for review, we conclude that you have waived the protection of sections 552.103 and 552.108, both of which are discretionary exceptions to required public disclosure. *See* Open Records Decision Nos. 542 (1990) at 4, 177 (1977). Moreover, without having a copy of the records at issue before us, it is impossible for this office to determine the extent to which the records at issue contain confidential information excepted from disclosure by section 552.101. We therefore have no basis on which to conclude that any of the records you have withheld from the requestor are excepted from required public disclosure. Accordingly, absent a demonstration to this office that the records at issue are made confidential by law, we conclude that all of the requested records, including any handwritten notes and "investigator work product," is public information that must be released.

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 should 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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/RWP/rho

Ref.: ID# 32932

cc: Ms. Tena S. Francis  
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