



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 11, 1996

Mr. Jason C. Marshall
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR96-0027

Dear Mr. Marshall:

You state that on December 4, 1995, the City of Coppell (the "city") received Open Records Letter No. 95-1353 (1995) concerning the requests for information made by John and Pamela Robinson. You claim, in your letters of December 7, 1995, and December 18, 1995, that there are additional facts and considerations concerning this matter. You ask that this office reconsider its ruling of December 4, 1995. Your request for reconsideration was assigned ID# 37585.

In Open Records Letter No. 95-1353 (1995), this office determined that the city did not meet the mandatory ten-day deadline for requesting an attorney general's opinion under chapter 552 of the Government Code. In so doing, the city waived the discretionary exceptions to disclosure and, except for the information made confidential by law addressed in the ruling, the information was presumed to be public. We further informed the city that to overcome such a presumption the city must demonstrate compelling reasons for withholding the information, such as, third party interests.

You contend that the city was under "an extreme burden" to comply with its statutory duty because the initial requests for information were sent by facsimile to various employees of the city instead of using the "information request form" and submitting it to the city secretary. The open records laws place an implicit duty on a chief administrative officer to instruct his staff about compliance with chapter 552 and to make public the identity of persons to whom a request should be directed. Open Records Decision Nos. 576 (1990), 497 (1988). However, chapter 552 does not require a requestor to name the chief administrative officer of a governmental body or the officer for public information in order to make a valid request, so long as the request can

reasonably be identified as a request for public information. See Open Records Decision No. 497 (1988). Moreover, chapter 552 does not require that a requestor submit a request for information on any particular form, merely that it be a *written* request for information. See Open Records Decision Nos. 497 (1988) (no particular request form or "magic words" are required by statutory predecessor to ch. 552), 483 (1987) (same).

The city argues that the initial request of May 5, 1995, was not received until May 8, 1995, because the letter was sent by facsimile after normal business hours. Assuming this was indeed the case, the city still failed to request an attorney general decision within ten days of receiving the request for information. The city's request for a decision was postmarked and dated May 23, 1995. The tenth day for a request received on May 8, 1995, would have been May 18, 1995.

You assert, however, that the city requested clarification from Mr. Robinson concerning the requests for information on May 16, 1995. You suggest that because the city was negotiating with the requestor concerning the identification of the requested information that the ten days did not start until Mr. Robinson's letter of May 17, 1995, clarifying his request. We disagree.

In your brief for reconsideration, you state that the request for clarification by the city was sent by Chief of Police David Miller in response to Mr. Robinson's letter of *May 15, 1995*. Yet, Mr. Robinson received a letter from the city dated May 12, 1995, denying his request for information.¹ The letter was apparently sent in response to a telephone conversation between the requestor and a city employee on May 9, 1995. It is clear that Mr. Robinson's letters of May 5, 1995, and May 8, 1995, were identified by city employees as requests for information despite Mr. Robinson's failure to use the city's "information request form." Moreover, the May 12, 1995, letter demonstrates that the city had already identified the requested information.²

¹The city's letter does not indicate that the city was planning to request a ruling from this office, merely that the request for information was denied. Chapter 552 can be fairly read as eliminating the need for a decision request only when the precise information at issue has been determined to be exempted from disclosure; where only the *standard* to be applied has been addressed, such as section 552.108 and an active criminal investigation, the *applicability* of the standard to particular information must be determined by the attorney general. Open Records Decision No. 435 (1986).

²As noted in Open Records Letter No. 95-1353 (1995), the requestor consistently sought access to the entire case file:

On May 5, 1995, the requestor faxed his original request for "*everything that is in th[e] case file*" to the Coppell Police Department. On May 8, 1995, the requestor sent another telecopy to the city, in which he stated that he wanted to review his "*entire file*." The city responded on May 12, 1995 The requestor submitted another letter on May 13, 1995, *again stating that he wanted a copy of everything in the case file*. Additionally, both the requestor and his wife submitted a request for "*all documents relating to the assault of Pamela Robinson, shooting of John Robinson and the theft of [their] automobile on August 14, 1994*" on May 15, 1995. The city sent the requestor a letter on May 16, 1995, informing him that

As the city has not demonstrated compelling reasons to overcome the presumption of openness, we advise the city to comply with Open Records Letter No. 95-1353 (1995) without further delay. We remind the city that the failure or refusal to provide access to or copying of public information is a criminal offense under chapter 552 of the Government Code. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 25, 1995 Tex. Sess. Law Serv. 5127, 5141-42 (to be codified at Gov't Code § 552.353).

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sandra L. Coaxum, C.P.A.
Chief, Open Records Division

SLC/LBC/rho

Ref: ID# 37585

Enclosure: Open Records Letter No. 95-1353 (1995)

cc: John & Pamela Robinson
540 Christi
Coppell, Texas 75019
(w/ enclosure)

(Footnote continued)

the city needed clarification as to what information the requestor was seeking and set out the categories of information that were available. The requestor responded on May 17, 1995, and *for the fourth time requested everything in the case file.*

Open Records Letter No. 95-1353 (1995) at 1-2 (emphasis added).