



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 5, 1997

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR97-0256

Dear Mr. Pagan:

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# 103658.

The City of McAllen Police Department (the "department") received a request for "a report of case 96-53674." You claim the requested information should be excepted from required public disclosure under section 552.108 of the Government Code, and that "if appropriate," the City of McAllen has already released the "front page" offense report information.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth calendar day after the date of receiving the written request. The department received the written request for information on October 28, 1996. You did not request a decision from this office until November 12, 1996, more than ten calendar days after the requestor's written request. Therefore, we conclude that the department failed to meet its ten-day deadline for requesting an opinion from this office.

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.* Normally, a compelling interest is 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.

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact this office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 103658

Enclosure: Submitted document

cc: Arnaldo Ramirez
213 S. Athol
Pharr, Texas 78577
(w/o enclosures)