



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 25, 1997

Ms. Allison Chitsey
Assistant District Attorney
51st Judicial District of Texas
Tom Green County Courthouse
112 West Beauregard
San Angelo, Texas 6903

OR97-0619

Dear Ms. Chitsey:

You ask that we overrule our decision in Open Records Letter No. 96-1755 (1996). Your request was assigned ID# 104882.

The District Attorney of the 51st Judicial District of Texas (the "District Attorney") received a request for a certain criminal file on December 22, 1995. In Open Records Letter No. 96-1755 (1996), this office determined that, as the District Attorney is a "governmental body" subject to the Open Records Act, *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996), and as the District Attorney raised no exception to the public release of the exception, the requested information must be released to the requestor. You now assert that the requested information is excepted from required public disclosure based on section 552.108 of the Government Code.

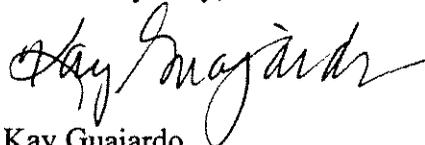
Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution. Gov't Code § 552.108. The Open Records Act requires a governmental body to raise an exception to public disclosure of requested information within ten days of receiving the request for information. *See* Gov't Code 552.301(a). When a governmental body fails to raise an exception within this deadline, the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. When an exception to disclosure that is designed to protect the interests of a third party is applicable, the presumption of openness may be overcome. See Open Records Decision No. 552. (1990). The District Attorney raises section 552.108, an exception that generally protects the interests of a governmental body, rather than a third party. Consequently, the District Attorney has not demonstrated a compelling reason to overcome the presumption that the requested information is public. The District Attorney may not withhold the requested information from disclosure based on section 552.108.

The act requires a public records officer to “promptly” produce public information. See *id.* § 552.221. We note that the District Attorney delayed nearly three months before asking this office to reconsider Open Records Letter No. 96-1755 (1996). Section 552.353 of the Government Code requires a governmental body to “file a cause of action seeking relief from compliance with the decision of the attorney general” not later than the tenth calendar day after receiving a ruling from our office. See Gov’t Code § 552.353(b)(3). The filing of a petition pursuant to section 552.353 is the only form of relief the legislature expressly provided a governmental body from compliance with an open records decision. The District Attorney has not sought judicial relief from compliance with Open Records Letter No. 96-1755 (1996). Thus, as the District Attorney has not timely sought judicial relief from compliance with our ruling, he must “promptly” release the information.

We are resolving this matter with this 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 104882

cc: Mr. Jay L. Winckler
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