



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 10, 1997

Mr. Jason D. McClain
Assistant City Attorney
Prosecution Division
Municipal Building
City of Dallas
Office of the City Attorney
Dallas, Texas 75201

OR97-0758

Dear Mr. McClain:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105148.

The City of Dallas (the "city"), through the Dallas Police Department, received a request for "any and all incident reports and photographs" pertaining to the death of a particular individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.

Although the city received the request on January 16, 1997, the city did not seek a decision from this office until January 29, 1997. See Gov't Code § 552.308 (post office cancellation shows whether request is timely made). Section 552.301 of the Government Code provides that:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under [chapter 552] must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply *within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.* [Emphasis added.]

Chapter 552 thus imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for information.

Failure to abide by this provision results in the presumption that the information is public. Gov't Code § 552.302.

The presumption that information is public when the ten day deadline is not met can only be overcome by a compelling demonstration that the information at issue should not be made public, such as when information is made confidential by other law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing information was made confidential by other law or affects third party interests). Therefore, unless the requested information is confidential by law or other compelling reasons exist as to why the information should not be made public, you must release the information.¹

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/SAB/ch

Ref.: ID# 105148

Enclosures: Submitted documents

cc: Mark R. Benavides
4924 Greenville Ave.
Dallas, Texas 75206
(w/o enclosures)

¹We note that the autopsy report submitted to this office is expressly made public by the Code of Criminal Procedure. Code Crim. Proc. art. 49.25, § 11.