



November 1, 1999

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-3075

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130556.

The City of Dallas Police Department (the "department") received a request for all the arrest and incident records of two persons. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the representative sample of documents submitted.¹

The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See Gov't Code § 552.302*. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The department received the request for information on September 29, 1999. You did not seek a decision from this office until October 19, 1999. Consequently, you have not met

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

your statutory burden under section 552.301 and the requested information is presumed public. In the absence of a demonstration that the requested information is confidential by law or that other compelling reasons exist as to why the information should not be made public, the information must be released. Open Records Decision No. 195 (1978). Because you claim that the requested investigation materials are protected by privacy, we will consider your arguments against disclosure. Open Records Decision No. 195 (1978).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all the criminal records of two named individuals, one of whom is the requestor. We believe that the nonrequestor's right to privacy has been implicated. Thus, to the extent that the department has records in which the named nonrequestor is a possible suspect, we conclude that the department has overcome the presumption of openness and must withhold this information under section 552.101 of the Government Code. *See id.*; *see also* Gov't Code § 411.106(b).

However, the other named person who is the subject of the records is the requestor. You must release the information pertaining to the requestor, who has a special right of access to the information. *See* Gov't Code § 552.023 (person has a right of access to information that relates to that person and is protected from disclosure by laws intended to protect that person's privacy interests).

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.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/jc

Ref: ID# 130556

Encl. Submitted documents

cc: Ms. Mary Jackson
P. O. Box 864663
Plano, Texas 75212
(w/o enclosures)