



February 7, 2000

Lieutenant Arturo Valdez  
City of McAllen Police Department  
1501 Pecan Boulevard  
McAllen, Texas 78501

OR2000-0437

Dear Lieutenant Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#132331.

The McAllen Police Department (the "department") received a request for report number 99-39659. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted 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 business day after the date of receiving the written request. The ten-day deadline is a statutorily imposed deadline. Gov't Code § 552.301. 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). The department received the written request for information on December 2, 1999. The postmark shows that you mailed your request for a decision to this office on December 17, 1999, more than ten business days after receipt of the requestor's written request. Therefore, we conclude that the department failed to meet the ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten business 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 Publ'g 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 at 2 (1977).

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). Because section 552.108 is designed to protect a governmental body's interest, we conclude that the department has waived the exception as to the submitted information as a result of its untimely submission of a request for an opinion from this office. *See generally* Open Records Decision No. 630 (1994) (demonstration of applicability of section 552.107(1) does not constitute compelling reason to overcome presumption of openness). Therefore, except as noted below, you must release the requested information.

We note that section 552.130 of the Government Code exempts from public disclosure information relating to a driver's license issued by an agency of this state. Therefore, you must withhold the driver's license number under section 552.130. The remaining requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/KSK/ljp

Ref: ID# 132331

Encl. Submitted documents

cc: Mr. Noe Tamez  
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McAllen, Texas 78501  
(w/o enclosures)