Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 20, 1992

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P. O. Box 99
Huntsville, Texas 77342-0099

OR92-667

Dear Mr. Peck:

On October 21, 1992, we received your request for an open records decision pursuant to section 7 of the Open Records Act, V.T.C.S. art. 6252-17a. This request was with regard to certain records sought by Ms. Bonnie Daniel regarding Irineo Tristan Montoya. Your request was assigned ID# 17729 (your id number OR92-1013-0454).

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 7(a) to submit that request to the attorney general within 10 days of the governmental body's receipt of the request for information. The time limitation found in section 7 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 prescribed by section 7(a), a heightened presumption of openness arises which can only be overcome by a compelling demonstration that the information should not be made public. *Id.*

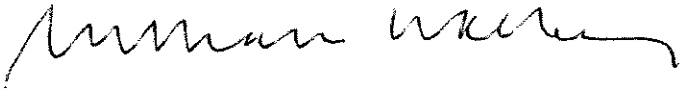
However, we realize that the short time frame prescribed by section 7(a) may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On October 23, 1992, we asked for copies of the requested documents and an explanation for why the documents were excepted from required public disclosure. To date we have not received your reply.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Without the information we requested of you, your request for an open records decision remains incomplete.

Consequently, this office cannot consider your claims with regard sections 3(a)(8) and 3(a)(11). Should you at some future date request that this matter be reopened and considered, we will not consider your request timely, and will consider these discretionary exceptions to required public disclosure as waived unless you can demonstrate compelling reasons why the information should not be released. *Hancock, supra*. In the absence of such a compelling demonstration, we find that you have not met your burden under the heightened presumption of openness with regard to these exceptions. This office also lacks the necessary information to evaluate your claims under sections 3(a)(1) and 3(a)(7).

Accordingly, we are closing the file without a finding. The person requesting the information in your custody may pursue such remedies as may be appropriate. *See, e.g.*, V.T.C.S., art. 6252-17a, § 8. While we cannot direct you to disclose information that is confidential under the law, neither can we provide you with an opinion upon which you can rely as an affirmative defense to prosecution under section 10(c)(1) of the Open Records Act. If you have any questions regarding this matter, please refer to OR92-667.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/RWP/lmm

Ref.: ID# 17729

cc: Ms. Bonnie Lee Daniel
Vial, Hamilton, Koch & Knox
1717 Main Street, Suite 4400
Dallas, Texas 75201