Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 5, 1994

Det. A. T. Walters
Oak Ridge North Police Department
27326 Robinson Road, Suite 115
Oak Ridge, Texas 77385

OR94-324

Dear Det. Walters:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).[1] Your request was assigned ID# 24587. You assert that the requested information is excepted from required public disclosure under sections 552.101, 552.102, 552.103, and 552.108 of the Government Code (former sections 3(a)(1), 3(a)(2), 3(a)(3), and 3(a)(8), respectively, of article 6252-17a, V.T.C.S.).

The Open Records 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 10 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).

We realize that the short time frame prescribed by section 552.301 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

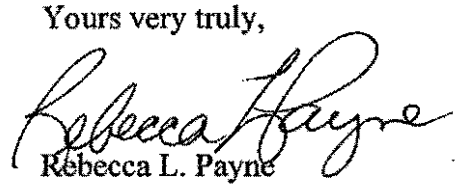
[1]The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

March 24, 1994, we asked you for copies of the requested records.[2] To date we have not received your reply. Consequently, your request for an open records decision remains incomplete.

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 requested from you, this office is unable to evaluate the exception(s) you raised. Consequently, we find that you have not met your burden under sections 552.301 - .303 of the act and that the information is presumed to be public.

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.[3] *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact our office.[4]

Yours very truly,



Rebecca L. Payne
Section Chief
Open Government Section

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[2]In your letter to this office, you contend that the requestor has not adequately identified the records he seeks. We disagree. In his open records request, Mr. Gross specifically requests copies of records containing the following information about a certain police officer: "the length of time employed, dates of commendations or promotions, dates of and reasons for disciplinary action and complaints with the names of the complainants." It is clear to this office that the requestor intended to obtain all such records coming within the ambit of his request.

[3]We note that although privacy interests of third parties protected by former sections 3(a)(1) and 3(a)(2) (now sections 552.101 and 552.102, respectively, of the Government Code) may not be waived by a governmental body, *see* Open Records Decision No. 150 (1977) (copy enclosed), the type of information at issue here generally does not implicate the public employee's privacy interests. *See* Open Records Decision Nos. 484 (1987); 444 (1986); 208 (1978). *But see* Open Records Decision No. 350 (1982) (substance of citizen's complaint against police officer *may* implicate *citizen's* privacy interests).

[4]Your February 9, 1994 letter to the requestor states that "[i]t is not the policy of this Department to send copies of any information requested under the Open Records Act to any party, nor is this provided for in the Act." Although this office has not specifically ruled on whether a governmental body must *mail* copies of public documents when requested to do so, hundreds of governmental bodies routinely have mailed copies of public documents since 1973, the effective date of the Open Records Act. To require that members of the public travel great distances to obtain access to public information held by governmental bodies based in other localities would severely restrict the availability of public information. In effect, people in Texas who could not afford such travel would be denied access to information held by most governmental entities. This would not fulfill the act's mandate that its provisions be construed in favor of openness. *See* Gov't Code § 552.001(b). Consequently, if the requestor has asked that the requested information be mailed to him and he is willing to pay postage, we encourage you to mail the requested records to the requestor once your office has received payment for these records.

RLP/rho

Ref.: ID# 24587

Enclosure: Open Records Decision No. 150

cc: Mr. Michael C. Gross
Zimmermann & Lavine, P.C.
770 South Post Oak Lane, Suite 620
Houston, Texas 77056
(w/o enclosures)