



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 27, 1994

Mr. Riley Simpson
City of Copperas Cove
P.O. Box 111
Copperas Cove, Texas 76522

OR94-036

Dear Mr. Simpson:

On September 9, 1993, we received your request for an open records decision pursuant to section 552.301 of the Open Records Act, chapter 552 of the Government Code (former V.T.C.S. art. 6252-17a¹). Your request was assigned ID# 22199. You appeared to assert that the requested information is excepted from required public disclosure under section 552.103 (former section 3(a)(3)) of the Open Records Act, the "litigation" exception.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 (former section 7(a)) 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).

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46.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.

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 September 23, 1993, we asked you for copies of the records at issue. 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). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate the exception(s) you raised under section 552.021(a) (former section 3(a)) of the act. Consequently, we find that you have not met your burden under sections 552.301 - .303 (former section 7) 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. *See also* Gov't Code § 552.352 (former V.T.C.S. art. 6252-17a, §10(a), (f)) (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact this office.

Yours very truly,


Rebecca L. Payne
Section Chief
Open Government Section

RLP/rho

Ref.: ID# 22199

cc: Mr. Frank Mucein, Jr.
2314 E. Highway 190
Copperas Cove, Texas 76522