



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

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

OR94-339

Dear Mr. Peck:

On June 7, 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 (formerly V.T.C.S. art. 6252-17a).¹ Your request was assigned ID# 21093. You assert that the requested information is excepted from required public disclosure under sections 552.101, .102, .107, .108, .111, and .122 of the Government Code (formerly sections 3(a)(1), 3(a)(2), 3(a)(7), 3(a)(8), and 3(a)(11), and 3(a)(22) of art. 6252-17a, V.T.C.S.).

The Open Records Act imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 (formerly 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. *But 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).

¹The Seventy-third Legislature repealed article 6252-17a, V.T.C.S., and codified it in the Government Code at chapter 552. Acts 1993, 73d Leg., ch. 268, §§ 1, 46. 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 July 9, 1993, we asked you for copies of the records at issue and your arguments for withholding the documents. 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 exempted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you and your arguments for withholding the information, this office is unable to evaluate the exceptions you raised under section 552.021(a) (formerly section 3(a)) of the act. Consequently, we find that you have not met your burden under sections 552.301 - .303 (formerly 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 (formerly 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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/rho

Ref.: ID# 21093

cc: Mr. Eric Noonan
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