



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 29, 1994

Ms. Tracy L. Spoor
Commander/Special Prosecutor
South Texas Specialized Crimes
and Narcotics Task Force
P.O. Box 213
Kingsville, Texas 78364

OR94-519

Dear Ms. Spoor:

On April 19, 1994, we received your request for an open records decision pursuant to the Open Records Act, chapter 552 of the Government Code, regarding Mr. Carlos Spector's open records request for a particular search warrant, the supporting affidavit, and an inventory of items seized pursuant to the search warrant. Your request was assigned ID# 25962.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision under section 552.301 to submit that request to the attorney general within ten days after the governmental body received 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).*

On May 26, 1994, we asked that you provide this office with a copy of Mr. Spector's open records request so that we could determine whether you sought an open records decision within the statutory deadline. Our notice to you included the caveat that your failure to submit a copy of Mr. Spector's request would result in the waiver of the act's discretionary exceptions. 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 requested from you, this office is unable to evaluate whether your request for an open records decision was timely. Consequently, we find that you have not met your burden in establishing that you requested an open records decision within ten days of receipt of Mr. Spector's request as required by section 552.301 of the Government Code. The requested information therefore is presumed to be public and consequently must be released to Mr. Spector. If you have any questions regarding this matter, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/RWP/rho

Ref.: ID# 25962

Enclosures: Submitted documents

cc: Mr. Carlos Spector
1217 East Lee Street
Kingsville, Texas 78364
(w/o enclosures)