



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1994

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
Post Office Box 99
Huntsville, Texas 77342-099

OR94-885

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. You assert that the requested information is excepted from required public disclosure under sections 552.108 and 552.111 of the Government Code. Your request was assigned ID# 26160.

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 May 12, 1994, we asked you to submit copies of the records at issue within seven (7) days of the date of our notice. We did not receive the requested copies until September 26, 1994.

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 was not completed until September 26, 1994. Because you failed to provide this office with the necessary information in a timely manner as requested by this office and as required by the act, we find that you have not met your burden under sections 552.301 - .303 and that the information is presumed to be public.¹ See Open Records Decision No. 195 (1978).

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 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact our office.

Yours very truly,



Rebecca L. Payne
Section Chief
Open Government Section

RLP/sbm

Ref.: ID# 26160

Enclosures: Submitted documents

¹We understand that, despite our May 12th request for copies of the requested documents, there may have been some confusion as to whether you were required to provide us with copies of the specific documents at issue in this request. We note that even if the documents had been timely submitted, we would have directed the release of the requested information. In your original request letter dated April 28, 1994, you only claimed that sections 552.108 and 552.111 excepted the requested information from required public disclosure. However, neither section 552.108 nor section 552.111 protects this information from public disclosure. See Open Records Letter No. 94-652 (1994). In your letter brief dated May 16, 1994, you subsequently raised an additional exception, section 552.122. However, since you failed to claim section 552.122 within the 10-day period required by section 552.301, and did not provide compelling reasons as to why the requested information should nevertheless be withheld, you waived any protection this exception may have provided the requested information. See generally Open Records Decision No. 195 (1978).