



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 17, 1995

Mr. Donald G. Davis
Assistant District Attorney
Dallas County
Frank Crowley Courts Building
133 North Industrial Boulevard - LB 19
Dallas, Texas 75207-4313

OR95-127

Dear Mr. Davis:

On September 15, 1994, we received your request for an open records decision pursuant to the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29128. You asserted that certain information requested by Mr. Lawrence Friedman, attorney for the City of Coppell, is excepted from required public disclosure under sections 552.101 and 552.111 of the Government Code.

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 ten 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* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that 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, our policy has been to give the governmental body an opportunity to complete the request.

On January 30, 1995, we returned the documents at issue to you and asked that you resubmit those documents to us with markings to show which exceptions apply to specific portions of the documents. We specifically requested that you indicate to us the portions of the records coming under the protection of section 552.111 and the informer's privilege as incorporated into section 552.101. 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 the applicability of section 552.111. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 and that because you have not shown compelling reasons for withholding any of the information at issue pursuant to section 552.111, you have waived the protection of this section; accordingly, this information is now presumed to be public and must be released.

As noted above, a compelling interest may arise when a third party's interests are at stake. Open Records Decision No. 552 (1990) at 1. However, the informer's privilege is designed to protect the government's interests, and thus, the existence of this privilege by itself does not demonstrate a compelling interest to withhold the information. Furthermore, you have not provided any specific information that would constitute a compelling reason for withholding the identity of the named individuals in this particular instance. Therefore, because you have not presented this office with a compelling reason why the information should be withheld, your office may not withhold the requested information pursuant to the informer's privilege.

We agree with your contention that criminal history record information obtained from the National Crime Information Center and the Texas Crime Information Center networks is confidential and may not be released to the public. *See generally* Open Records Decision No. 565 (1990) at 10-12. However, without copies of the documents your office obtained from the Federal Bureau of Investigation, we are unable to determine the extent to which these records are deemed confidential by federal law. To the extent that these records are not confidential, your office must release them to the requestor. *But see* Gov't Code § 552.352 (distribution of confidential information is 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/RWP/rho

Ref.: ID# 29128

cc: Mr. Lawrence J. Friedman
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