



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 30, 1995

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

OR95-916

Dear Mr. Peck:

On November 9, 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# 30301. You assert that the information requested by Ms. Stacey Mitchell is excepted from required public disclosure.

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, 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 December 12, 1994, we asked you for copies of the records at issue and an explanation as to why those records are excepted from public disclosure. 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 exceptions you raised under section 552.021(a). Consequently, we find that you have not met your burden under sections 552.301-.303 of the Government Code and that the information is presumed to be public. *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 (distribution of confidential information is criminal offense). If you have any questions regarding this matter, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/ch

Ref: ID# 30301