



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1995

Mr. Pete T. Duarte
Chief Executive Officer
Thomason Hospital
4815 Alameda Avenue
El Paso, Texas 79905

OR95-961

Dear Mr. Duarte:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33176.

Thomason Hospital (the "hospital") received an open records request for the following information:

From your accounting records, I want a total of all legal fees paid by the hospital in its defense of Title VII, Equal Rights Amendment, Wrongful Discharge, and *other Employment related litigation* from January 1, 1990, to the latest payment issued in 1995. Also provide me with record of all fees paid to a lawyer named Kenneth Carr, or to his law firm on his behalf, for litigation of Title VII, ERA, Wrongful Discharge, or *other employee related law suits* for the same period.¹

I also seek the number of claims filed against the hospital district and/or individuals under Title VII, Texas ERA, Wrongful Discharge, and any other *employee related cases* for the period January 1, 1990, to March 31, 1995. And of this number give me the total dollar amount paid in out of court settlements. [Emphasis added; footnote added.]

¹We note that in subsequent correspondence with you the requestor made a second open records request and asked for the total amount paid by the hospital for all legal expenses for fiscal year 1994. The requestor informed this office that you provided that information. It does not appear that the second request was a withdrawal of the first request or a clarification as to the type of records sought. We assume the requestor still seeks information concerning claims and employment related litigation.

You contend, *inter alia*, that the request is overly broad, vague, and burdensome in that the requestor fails to identify "with any particularity" the records he seeks. We agree that the language "other Employment related litigation" and "other employee related law suits" is sufficiently vague to require the hospital to seek clarification from the requestor as to the types of records being sought. When a requestor makes a vague request, the governmental body receiving the request should make a good faith effort to advise the requestor of the type of documents available so that the requestor may narrow the request. See Open Records Decision No. 87 (1975). The hospital therefore should recontact the requestor to advise him of the various types of "other employee related" lawsuits with which it has been involved so that he may identify the types of records he seeks. The hospital will have ten days from the date it receives clarification from the requestor to seek an open records decision with regard to those documents.

However, a request for records made pursuant to the Open Records Act may not be disregarded simply because a citizen does not specify the exact documents he desires.² *Id.* In this regard this office believes that, except as discussed above, the requestor has reasonably specified the types of records he is seeking from the hospital. On May 10, 1995, we asked you for copies of those records, or representative samples thereof, in order to evaluate the exceptions to required public disclosure that you raised. Our notification to you included the caveat that your failure to submit copies of the records at issue would result in the hospital's waiver of the act's "discretionary" exceptions. To date we have not received copies of any those records.

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. 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).

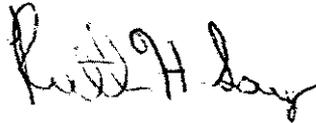
The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental 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.

²We also note that the "administrative inconvenience" of providing public records is not grounds for refusing to comply with the mandates of the Open Records Act. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

However, to date your request for an open records decision remains incomplete. Without the information requested from you, this office has no basis on which to conclude that the requested records are excepted from required public disclosure. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the Government Code and that, except for the records pertaining to "other Employment related litigation," the requested 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.³ See also Gov't Code § 552.352 (distribution of confidential information is criminal offense). If you have any questions regarding this matter, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/rho

Ref.: ID# 33176

cc: Mr. Adrian Armijo
9627 Sims
El Paso, Texas 79905

³Included among the records presumed to be public are all of those records that would otherwise be protected under the attorney-client privilege, which this office now deems to have been waived. Cf. Open Records Decision No. 630 (1994) at 6-7 (because attorney-client privilege is waivable, "the mere fact that information falls within the section 552.107(1) exception does not alone constitute a compelling reason sufficient to overcome the presumption of openness).