



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 19, 1995

Mr. Douglas R. Hyde  
Assistant City Attorney  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR95-1474

Dear Mr. Hyde:

You previously asked whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. A copy of the first page of your letter to this office is enclosed for your reference. You assert that the requested information is excepted from required public disclosure under sections 552.101, 552.103(1), and 552.108 of the Government Code.<sup>1</sup> Your request was assigned ID# 31083.

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.<sup>2</sup> 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.*

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<sup>1</sup>You also contend that the City of Dallas need not comply with two aspects of the request because the requestor does not seek access to "information" but rather to certain tangible objects. This office agrees that Items 7 and 9 in the request are not legitimate requests under the Open Records Act. *See Gov't Code § 552.002* (defining "public record").

<sup>2</sup>We are in receipt of a letter from the requestor dated January 27, 1995. That letter states that your office claims the proper procedure for making an open records request was not followed. Please note that a written communication that reasonably can be judged to be a request for public information is a request for information under the Open Records Act. *See, e.g.,* Open Records Decision No. 44 (1974) at 2; *see also* Open Records Decision No. 497 (1988) at 3.

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 January 21, 1995, we asked you for copies of the records at issue and to submit a copy of the request letter. To date we have not received copies of the records at issue.

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. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the Government Code and that the 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. *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,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/RWP/rho

Ref.: ID# 31083

Enclosure: First page of Dec. 29, 1994 letter

cc: Ms. Connie Luthy  
714 Dumont  
Dallas, Texas 75214  
(w/o enclosure)