



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Mr. J. Val Fulcher
P.O. Box 600
Teague, Texas 75860

OR95-1479

Dear Mr. Fulcher:

On behalf of the City of Teague, you ask 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. Your request was assigned ID# 31189.

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).

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 17, 1995, we asked you for copies of the records at issue, your arguments for withholding the documents, and a copy of the request letter. To date we have not received these materials.

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 availability of these records. Consequently, we find that you have not met your burden under sections 552.301 - .303 of the act and that you have waived all of the Open Records Act's discretionary exceptions to required public disclosure.

We note, however, that section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by common-law privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor, *see* Government Code § 552.352, you may not release information that implicates individuals' privacy interests.

In *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the Supreme Court concluded that where an individual's criminal history is compiled or summarized *by a governmental entity*, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. *See also Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). It is not clear to this office the extent to which the current open records request pertains to individuals' criminal pasts, as opposed to criminal charges that are currently under investigation or prosecution. If compliance with the open records request would require the city to compile police records of investigations that are no longer pending, the request must be denied.¹

However, in the absence of a demonstration that the information is otherwise confidential by law or that other compelling reasons exist as to why the information should not be made public, all records coming within the ambit of the request that pertain to pending investigations, prosecutions, or the current incarceration of the named individuals must be released. For your convenience, we have attached a list of the types of information that typically must be withheld from the public due to its confidential nature.

¹On the other hand, to the extent that the requestor can identify specific offenses for which these individuals have been arrested, *e.g.*, through public court records or other sources, your office must release "original records of entry . . . compiled chronologically and required by law . . . to be made public" pertaining to such offenses without violating those individuals' privacy rights. *See* 28 C.F.R. § 20.20(c).

If you have any questions regarding this matter, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Loretta DeHay".

Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/rho

Ref.: ID# 31189

Enclosures: First page of Jan. 5, 1995 letter
Confidentiality list

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(w/o enclosures)