



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 18, 1996

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78733-0001

OR96-1172

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. You assert that the requested information is excepted from required public disclosure under section 552.101 of the Government Code. Your request was assigned ID# 40513.

Chapter 552 of the Government Code 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).

Pursuant to section 552.301(b)(3), a governmental body must submit to this office a copy of the specific information requested or representative samples of the information if a voluminous amount of information was requested. On May 29, 1996, we asked you for copies of the records at issue. To date we have not received the requested copies.

Chapter 552 of the Government Code places on the custodian of public records the burden of establishing that records are exempted 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 exception you raised. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the act and that the information is presumed to be public. Open Records Decision No. 195 (1978). We note that information that is confidential by law or that affects third party interests is generally a compelling reason to overcome this presumption. *Id.* If no compelling reason exists as to why the information should not be made public, you must release the information. *Id.*; *see also* Gov't Code § 552.352 (distribution of confidential information is criminal offense). We note that you state that the department does not maintain documentation concerning a particular person's range and the safety criteria this person had to meet to be a safe range. A governmental body is not required to obtain information not in its possession. Open Records Decision No. 558 (1990). Therefore, the department need not respond to that part of the request. If you have any questions regarding this matter, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 40513

cc: Mr. Carl Badalich
P.O. Box 18150
Corpus Christi, Texas 78418