



Office of the Attorney General
State of Texas

August 21, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. John Schneider
Assistant City Attorney
City of Pasadena
Box 672
Pasadena, Texas 77501

OR92-502

Dear Mr. Schneider:

On July 29, 1992, we received your request for an open records decision pursuant to section 7 of the Open Records Act, V.T.C.S. art. 6252-17a. This request was with regard to certain information requested by Ms. Wanda Zavala. Your request was assigned ID# 16839.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 7(a) to submit that request to the attorney general within 10 days to the governmental body's receipt of the request for information. The time limitation found in section 7 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 prescribed by section 7(a), a heightened presumption of openness arises which can only be overcome by a compelling demonstration that the information should not be made public. *Id.*

However, we realize that the short time frame prescribed by section 7(a) 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 July 31, 1992, we asked you for copies of the "rail logs" that you believed to come within the ambit of Ms. Zavala's request. 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). Without the information we requested of you, your request for an open records decision remains incomplete.

Consequently, this office cannot consider the exceptions to required public disclosure you raise regarding this request, and we are closing the file. Should you at some future date request that this matter be reopened and considered, we will not consider your request timely, and will consider all discretionary exceptions to required public disclosure waived unless you can demonstrate compelling reasons why the information should not be released. *Hancock, supra*. In the absence of such a compelling demonstration, we find that you have not met your burden under the heightened presumption of openness and must release the requested information.¹ If you have questions regarding this matter, please refer to OR92-502.

Yours very truly,



Kay Hamilton Guajardo
Assistant Attorney General
Opinion Committee

KHG/RWP/lmm

Ref.: ID# 16839

cc: Ms. Wanda Zavala
Law Firm of Walter Gill
2616 So. Loop West, Suite 500
Houston, Texas 77054

¹We also note that the requested information appears to be of the same type that has previously been held to be public in *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).