



Office of the Attorney General
State of Texas

October 3, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Dennis E. Baker
Director, Division of Food And Drugs
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3182

OR92-580

Dear Mr. Baker:

On August 25, 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, with regard to information pertaining to a proposal from the Board of Pharmacy to reschedule certain controlled substances. Your request was assigned ID# 17125.

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 ten 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 September 11, 1992, we asked you for copies of the requested information and an explanation as to why the exceptions you raised, namely sections 3(a)(4) and 3(a)(6), protect the information from required public disclosure. 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*, 797 S.W.2d at 381. 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. If you have questions regarding this matter, please refer to OR92-580.

Yours very truly,



Kay Hamilton Guajardo
Assistant Attorney General
Opinion Committee

KHG/RWP/lmm

Ref.: ID# 17125