



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 6, 1993

Mr. Scott A. Kelly
Assistant General Counsel
Texas A&M University System
College Station, Texas 77843-1230

OR93-425

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19569.

The Texas A&M University System (the "system") has received two requests for information relating to the Texas A&M University System Research Corporation and the National Research Technologies Corporation. Specifically, the requestor seeks "all records of the Texas A&M Board of Regions [*sic*] relating to the Texas A&M University System Research Corporation . . . relating to the creation and operation of that entity from January 1, 1988, to the present time." In addition, the requestor seeks:

1. All documents relating to National Research Technologies Corporation, its formation, its capitalization, its operation, its business, its board of directors and all other documents showing any communications about or on behalf of National Research Technologies Corporation.¹

You claim that the request for information is "broad and unspecific" and that you sought clarification from the requestor. Under the Open Records Act, it is the governmental body's duty to make a good faith effort to determine what documents in its custody are responsive to a request. Open Records Decision No. 561 (1990) at 8. When a governmental body is presented with an unclear request for information rather than for specific records, the governmental body should advise the requestor of the types of information available so that he may narrow his request. *Id.* at 9; *see also* Open

¹We understand that a request for "[a]ll documents relating to communication with any agent, representative, officer or employee of Granada Foods Corporation, Granada BioScience, Inc., Granada Corporation, David Eller, Linda Eller or Granada Management Corporation" has been withdrawn.

Records Decision No. 563 (1990) at 7. You explain that the requestor, due to time constraints, "waived" your requirement to timely submit to us a request for an open records determination pursuant to section 7(a) of the Open Records Act, pending clarification of the request for information. Nonetheless, you submitted a request pursuant to section 7 within the mandated ten-day period, claiming that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(7), 3(a)(10), and 3(a)(11) of the Open Records Act.²

Section 7 of the Open Records Act requires you to submit to us the information you claim is excepted from disclosure and the reasons you believe this information is excepted from disclosure. The custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental body fails to show how an exception applies to the records, it will ordinarily waive the exception. See Attorney General Opinion JM-672 (1987). 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).

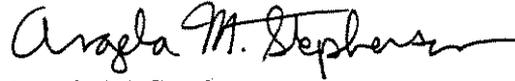
By copy of a letter dated April 6, 1993, you advised us that the requestor had narrowed the scope of his request. On April 19, 1993, we asked you for copies of the records at issue. To date, we have not received your reply. Without the information we requested of you, your request for an open records 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 379.³ In the absence of such a

²Because you requested a determination from this office within the ten day period, we need not consider whether the requestor effectively "waived" your duty to submit a request to this office pursuant to section 7(a).

³We note that you have raised sections 3(a)(1) and 3(a)(10). This office has found a compelling reason to withhold information when the information is deemed confidential by law, see Open Records Decision No. 481 (1987), or when an exception designed to protect the interests of a third party is applicable, see Open Records Decision No. 552 (1990) (withholding information as trade secrets under section 3(a)(10)). However, because you have not provided copies of the information at issue for our review, we are unable to determine the applicability of these exceptions in your case.

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 about this ruling, please contact this office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Opinion Committee

AMS/GCK/jmn

Ref.: ID# 19569
ID# 19589
ID# 19721
ID# 19747

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