



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 18, 1994

Mr. Robert Giddings  
The University of Texas System  
Office of the General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2981

OR94-378

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code (former V.T.C.S. art. 6252-17a<sup>1</sup>). Your request was assigned ID# 23192. You assert that the requested information is exempted from required public disclosure under section 552.104 (former section 3(a)(4)) of the Open Records Act.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 (former section 7(a)) to submit that request to the attorney general within 10 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).

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<sup>1</sup>We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

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 December 10, 1993, we asked you for copies of the records at issue. 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). 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 - .303 (former section 7) of the act. Therefore, any protection that section 552.104 may have provided this information has been waived, and the information is presumed to be public.

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (former V.T.C.S. art. 6252-17a, §10(a), (f)) (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact our office.

Yours very truly,



Rebecca L. Payne  
Section Chief  
Open Government Section

RLP/rho

Ref.: ID# 23192

cc: Mr. Patrick Keenan  
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