



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 28, 1995

Chief John P. McFall  
Shavano Park Police Department  
City of Shavano Park  
99 Saddletree Road  
San Antonio, Texas 78231-1412

OR95-902

Dear Chief McFall:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (the "act"). Your request was assigned ID# 31497.

The Shavano Park Police Department (the "department") received a request for "a copy of the police report filed concerning an alleged taping of a Shavano Park City Council closed session on August 16, 1994." You inform us that the case is still under active investigation. You believe that release of the requested information could compromise the disposition of the case and that the report is excepted from required public disclosure by section 552.108 of the act.

You have failed, however, to submit to this office for review copies of the records that the requestor seeks. In correspondence to your office, mailed on February 2, 1995, this office specifically asked that you submit to us copies of the requested information with the caveat that your failure to do so would result in the department's waiver of the act's discretionary exceptions. See Open Records Decision No. 197 (1978) at 1-2 (stating that governmental body's refusal to submit copies of requested information results in presumption that information is public).

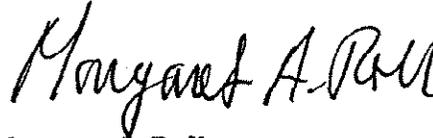
The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete.

Without the information requested from you, this office is unable to evaluate the exception raised by you under section 552.021(a) of the act. 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).

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. *Id.* See also Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/PIR/rho

Ref.: ID# 31497

cc: Mr. John H. Lazor  
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San Antonio, Texas 78231