



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Mr. Riley J. Simpson
City Attorney
City of Copperas Cove
P.O. Drawer 1449
Copperas Cove, Texas 76522

OR95-1482

Dear Mr. Simpson:

On August 9, 1993, we received your request for an open records decision pursuant to the Open Records Act, chapter 552 of the Government Code. You asserted that the requested information is excepted from required public disclosure under former sections 3(a)(17) and 3A of the Open Records Act (now sections 552.117 and 552.024 of the Government Code). A copy of the first page of your letter to this office is enclosed for your reference. Your request was assigned ID# 21712.

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

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 August 9, 1993, we asked you for a copy of the written request the city received for the information at issue.¹ 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 exceptions you raised. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the Government Code 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. Open Records Decision No. 195 (1978). *See also* Gov't Code § 552.352 (distribution of confidential information is criminal offense). For your convenience, we have attached a list of the types of confidential information that generally must be withheld from the public. If you have any questions regarding this matter, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/rho

Ref.: ID# 21712

Enclosure: Confidentiality list

¹We have also contacted you or your office by telephone on at least two occasions asking for a copy of the request for information.