



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Office of the Comptroller
LBJ State Office Building
Austin, Texas 78774

OR95-1542

Dear Ms. Joseph:

You previously asked whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. A copy of the first page of your letter to this office is enclosed for your reference. You assert that the requested information is excepted from required public disclosure under section 552.103(a) of the Government Code. Your request was assigned ID# 25888.

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 May 12, 1994, we asked you for copies of the records at issue, with the caveat that your failure to provide those records to us in timely manner would result in the waiver of the act's discretionary exceptions. You did not timely provide us with the requested information.

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). Because you failed to provide us with the required information in a timely manner, we find that you did not meet your burden under sections 552.301 through 552.303 of the Government Code and that the requested information is now 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 (the distribution of confidential information is a criminal offense). 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# 25888

Enclosures: First page of April 15, 1994 letter
Submitted documents

cc: Mr. Art Brogley
6100 Rue des Amis
San Antonio, Texas 78238
(w/o enclosures)