



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1995

Mr. Ronald S. Block
Block & Muscat
12603 Southwest Freeway, Suite 165
Stafford, Texas 77477

OR95-1624

Dear Mr. Block:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34362.

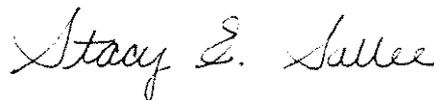
The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is 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 29, 1995, we asked you for copies of the records at issue. To date we have not received the requested copies.

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 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.¹ Open Records Decision No. 195 (1978). *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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Re: ID# 34362

¹In your letter to our office, you point out that the requestor asks for the "investigative report" relating to a former school district employee and state that although an investigation was conducted, no "investigative report" report was compiled. A governmental body has no obligation to compile or prepare new information. Open Records Decision No. 605 (1992). We note, however, that a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990). You also state that the information from this investigation is maintained by attorneys that were hired by the district to conduct the investigation. Information held by a third party is subject to the Open Records Act if it is collected by or for a governmental body and the governmental body owns the information or has a right of access to it. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 2, 1995 Tex. Sess. Law Serv. 5127, 5127 (Vernon) (to be codified as Gov't Code § 552.002(a)). In general, records held by a private attorney that are related to legal services performed by the attorney at the request of a governmental body are subject to the Open Records Act. Open Records Decision No. 499 (1988).