



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

March 29, 1989

Mr. Walter H. Rankin
Constable
Precinct No. 1, Harris County
P. O. Box 52578
Houston, Texas 77002

Dear Mr. Rankin:

This office previously notified you that we received a letter from Kevin P. McDonnell asking this office for assistance under the Open Records Act, article 6252-17a, V.T.C.S. In our letter to your office, dated September 9, 1988, we requested that you explain why you failed to request a decision from this office as to whether the requested information is public. This office received neither an explanation nor a request for an attorney general decision. Mr. McDonnell has recently informed this office that the information he requested has not been released to him. This decision is OR89-97.

Section 7(a) of the Open Records Act, article 6252-17a, V.T.C.S., provides:

If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information. (Emphasis added.)

Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request

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for information the governmental body wishes to withhold. In placing a time limit on the production of public information, the legislature recognized the value of timely production of public information. See also art. 6252-17a, §§ 4 (shall "promptly" produce public information), section 13 (may promulgate rules to ensure that "public records may be inspected efficiently, safely, and without delay").

When a governmental body fails to request a decision within 10 days of receiving a request for information, the information at issue is presumed public. City of Houston v. Houston Chronicle Publishing Co., 673 S.W.2d 316, 323 (Tex. App. - Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. Open Records Decision No. 319.

You have not shown compelling reasons why the information at issue should not be released. The information is presumed public information and must be released immediately. Please be advised that failure to provide information that the attorney general has determined to be public may give rise to an action for a writ of mandamus pursuant to section 8 of the Open Records Act or to criminal sanctions under section 10 of the act. Please indicate to this office, within five days of receipt of this letter ruling, whether you intend to release the records that Mr. McDonnell has requested.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this letter, please refer to OR89-97.

Yours very truly,

Open Government Section
of the Opinion Committee
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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/bc

Copies to: Kevin P. McDonnell

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