



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

November 21, 1989

Mr. Marvin J. Titzman
Executive Director
Texas Surplus Property Agency
P.O. Box 8120
San Antonio, Texas 78208-0120

Dear Mr. Titzman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 7619; this decision is OR89-391.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. Attorney General Opinion H-436 (1974). The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The Texas Surplus Property Agency received a request for all information about the possession and distribution, if any, of the chemical "agent orange" during a specific period of time. The requestor is concerned about possible pollution of Lake Tawankani and apparently traced, through information from other governmental bodies, a supply of the chemical to the agency. He seeks the amount of the chemical received, the lot numbers, label numbers, and manufacturer's name.

Apparently, the agency asked the requestor to narrow his request to correspond to surplus property provided to a specific geographic region. The agency has submitted to this office for review, as information responsive to his request, its entire file on the Sabine River Authority.

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Because you raise no exceptions to disclosure, this office has reviewed the file to determine only whether it contains information deemed confidential by law. None of the information may be withheld.

This conclusion, however, does not end the matter at issue. The requestor sought from the agency all information about the agency's possession and distribution of the chemical "agent orange." This is a very specific request. If the information exists, it must be released because you raise no exceptions to protect it. On the other hand, the act does not require that you create new information in response to a request. To resolve this issue, please either release the requested information or provide an explicit written assurance that the agency does not possess any information about the chemical "agent orange." Please provide the statement within 10 days of receipt of this ruling.

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 ruling, please refer to OR89-391.

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

JSR/le

Ref.: ID# 7619
ID# 7428
ID# 7869

cc: Glenn A. Wilkinson
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