



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

December 11, 1989

Mr. Allen Eli Bell
Executive Director
Texas Air Control Board
6330 Hwy. 290 East
Austin, Texas 78723

Dear Mr. Bell:

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# 7867; this decision is OR89-417.

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 Air Control Board received a request for emission data and other information from an application for a permit amendment. The board asks whether section 3(a)(10), the "trade secret" exception, of the Open Records Act protects the information at issue. Pursuant to Attorney General Opinion H-836 (1976), which held that the board must make an initial determination regarding whether specific information constitutes a trade secret, the board has concluded that section 3(a)(10) does not apply. We agree. The board's determination is attached and incorporated as an appendix to this ruling.

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We have considered the exception you claimed and reviewed the documents at issue. Your request for an open records decision falls within previous determinations of this office, specifically Attorney General Opinion H-539 (1975) and generally Open Records Decision Nos. 504, 494 (1988), copies of which are enclosed. For this reason, you must release the requested information.

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 OR89-417.

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# 7867
ID# 7998

Enclosures: Appendix
Attorney General Opinion H-539 (1975)
Open Records Decision No. 504 (1988)
Open Records Decision No. 494 (1988)

cc: Charles N. Simkins
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