



THE ATTORNEY GENERAL  
OF TEXAS

JIM SLATTON  
ATTORNEY GENERAL

January 11, 1990

Mr. Ron Lindsey  
Commissioner  
Texas Department of Human Services  
P.O. Box 2960  
Austin, Texas 78769

Dear Mr. Lindsey:

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# 5204; this decision is OR90-023.

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 calendar 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.)

You received a request for information under the Open Records Act on November 2, 1988. You requested a decision from this office on December 13, 1988. Consequently, you failed to request a decision within the 10 days required by section 7(a).

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 for information the governmental body wishes to withhold.

Mr. Ron Lindsey  
January 11, 1990  
Page 2

In placing a time limit on the production of public information, the legislature recognized the value of timely production of public information. See also V.T.C.S. art. 6252-17a, § 4 (shall "promptly" produce public information), § 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.

The Texas Department of Human Services received an open records request for all investigation records on Weldon Parkhill. You contend that section 3(a)(3) of the Open Records Act excepts this information from required public disclosure. You raised no arguments as to why section 3(a)(3) protects the requested documents other than that they "relate to litigation of a criminal or civil nature." To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision No. 452 (1986). Further, the governmental body's attorney must show that the requested material relates to the litigation, such that disclosure of the materials would impair the governmental body's litigation interests. Open Records Decision No. 511 (1988). You have not shown that the requested material meets these tests; consequently you may not withhold this information pursuant to section 3(a)(3).

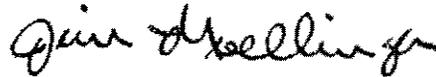
You also contend that section 3(a)(8) protects this information because, as of the time you requested and opinion from this office, the records in question had been turned over to the Tarrant County District Attorney, who was in the process of determining whether to present this information to the grand jury. This office contacted the District Attorney's office as was informed by Mr. Marshall Hines, Assistant District Attorney, that the case was in fact not presented to the grand jury and that the District Attorney does not anticipate filing criminal charges against Mr. Parkhill. Consequently, section 3(a)(8) does not apply to these records.

Mr. Ron Lindsey  
January 11, 1990  
Page 3

You have not shown compelling reasons why the information at issue should not be released. The information is public information and must be released.

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 OR90-023.

Yours very truly,



Open Government Section  
of the Opinion Committee  
Approved by Jim Moellinger  
Assistant Attorney General

JM/RWP/le

Ref.: ID# 5204

cc: Ralph Jones  
2400 One Main Place  
Dallas, Texas 75250