



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 22, 1990

Ms. Esther Chavez
Consumer Protection Division
Attorney General's Office
Supreme Court Building
Austin, Texas 78711

OR90-200

Dear Ms. Chavez:

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# 8375.

You have received a letter dated November 22, 1989, from Don F. Jordan, requesting access under the Texas Open Records Act to investigative materials regarding Abilene Oil Distributors. It appears that Mr. Jordan addressed his request to the wrong agency--the records were in the custody of the Consumer Protection Division of this office, rather than the Department of Agriculture. They were sent to the Opinion Committee on December 11, 1989. Mr. Jordan's letter was forwarded to the Consumer Protection Division on February 12, 1990, and to the Opinion Committee on May 4, 1990. On May 4, I spoke to you by telephone about the necessity for submitting a statement of reasons why this information should be excepted from disclosure under the Open Records Act. We have not yet received such a statement of reasons.

When an agency receives a request for records under the Open Records Act and it considers it excepted from disclosure by an exception in the act, it is required to request a decision from the attorney general on the applicability of the exception within ten calendar days. If the agency does not request a decision, the exceptions are waived, and the information is presumed to be open, absent a compelling reason for maintaining it as confidential. See Open Records Decision No. 319 (1982).

If an agency does not have custody of the records requested, it should inform the requestor of this fact so that he can request them from the custodian. In this case,

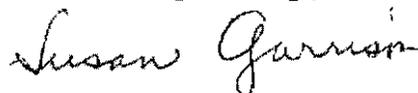
since the records were in possession of Consumer Protection Division of this office, the Department of Agriculture referred this matter to that division. Some uncertainty may have arisen about who was responsible for submitting a statement of reasons why this information is excepted from disclosure under the Open Records Act. Thus, the ten-day deadline was not enforced as of the department's receipt of the request letter or as of our receipt of the records. See generally Open Records Decision No. 333 (1982).

More than ten days have elapsed since I spoke to you about sending a memo of your reasons why this information should be excepted from disclosure, and we have not received it. Accordingly, the information is presumed to be available to the public, absent a compelling reason for excepting it from public disclosure. Open Records Decision No. 319 (1982); see also Open Records Decision No. 363 (1983). A compelling reason will be shown if release of records would injure a privacy right or a property right of a third party, or if the release would be inconsistent with a statute other than the Open Records Act, a judicial order or judicial decision. See Open Records Decision Nos. 319; 71 (1975).

We are returning the records to you. If you believe there is a compelling reason for excepting any of them from disclosure, please return them to us with your statement of reasons.

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 OR90-200.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/le

Ref.: ID# 8375, 9526,

Enclosure: Open Records Decision Nos. 319, 363, 71
Documents Sent

cc: David Bolduc
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

Don F. Jordan, Jr.
Abilene Oil Distributors, Inc.
P.O. Box 27
Abilene, Texas 79604