



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

July 9, 1990

Mr. Allen Beinke
Executive Director
Texas Water Commission
P.O. Box 13087
Capitol Station
Austin, Texas 78711-3087

OR90-286

Dear Mr. Beinke:

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 earlier request was assigned ID# 9573. Your recent response has been assigned ID# 9883.

You received a request for a copy of any documents provided to the Texas Water Commission by Excel Corporation or its president. You submitted as responsive to this request a copy of an agreement between Excel Corporation and 3-Way, Inc.

You received the request for information under the Open Records Act on April 12, 1990. You requested a decision from this office on May 2, 1990. Consequently, you failed to request a decision within the 10 days required by section 7(a) of the act.

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. 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). This presumption may only be overcome by a compelling demonstration that the information should not be released to the public, or if an exception designed to protect the interests of a third party is applicable. Open Records Decision No. 552 (1990).

We have considered the exceptions you claimed, specifically sections 3(a)(1), 3(a)(4), and 3(a)(10) and have reviewed the documents at issue. You have cited no authority, and we have found none, under which the requested information is "deemed confidential by law." Consequently section 3(a)(1) is inapplicable.

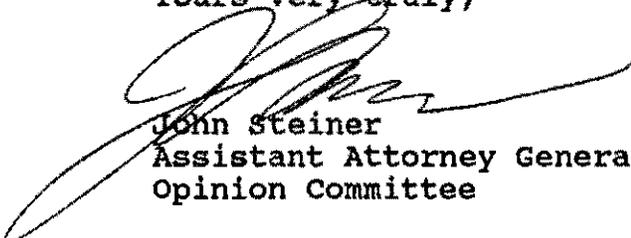
Section 3(a)(4) protects the government's purchasing interests in competitive situations. Open Records Decisions Nos. 514 (1988), 463 (1987). This exception is not applicable to the information in question.

Section 3(a)(10) protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." No assertion has been made that the requested information is a trade secret. Commercial or financial information is protected by section 3(a)(10) if disclosure is (1) likely to impair the government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. Open Records Decision No. 504 (1988). No showing has been made of likely harm to the competitive position of the person from whom the information was obtained. The government's interest in obtaining information in the future is not a third party's interest that will overcome the heightened presumption of openness resulting from your failure to request an opinion within the statutory ten days.

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.

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 OR90-286.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/le

Ref: ID# 9573, 9883

cc: K. Marvin Adams
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