



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 20, 1991

Mr. Richard D. Monroe  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11th Street  
Austin, Texas 78701

OR91-655

Dear Mr. Monroe:

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# 14385.

You received a request for information under the Open Records Act on November 22, 1991. You requested a decision from this office on December 3, 1991. 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. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. - Austin 1990, no writ); *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. *See id.*

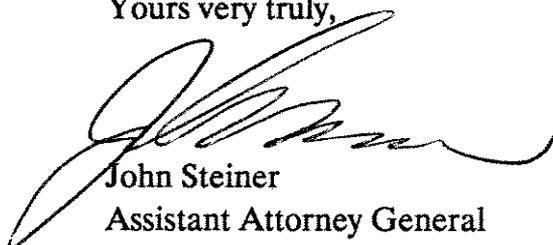
You state that the Department of Transportation was late in requesting an open records decision because you had been ill during the ten day time period following the department's receipt of the open records request. Regretfully, the

Open Records Act does not provide for an exception to the "ten day rule" in such circumstances. Nor have you otherwise provided a compelling reason for withholding the information at issue.

You have submitted to this office for review one type-written two-page memorandum, which also contains hand-written notes, from Jim Cotton to Ed Collins concerning an "Attached Belton Park and Ride Memo." This information, as well as any other information coming within the ambit of the open records request, is presumed to be public and must be released. This office strongly urges the department to promulgate a "back-up" procedure so that it does not waive the act's discretionary exceptions in similar situations in the future.

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 OR91-655.

Yours very truly,



John Steiner  
Assistant Attorney General  
Opinion Committee

JS/RWP/lcd

Ref: ID# 14385

cc: J. Patrick Wiseman  
600 W. 7th Street  
Austin, Texas 78701-2710