



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 17, 1993

Mr. Dan LeFleur
Office of the General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR93-236

Dear Mr. LeFleur:

The Department of Health received an application for information pursuant to the Open Records Act, V.T.C.S. The applicant sought a Toxic Substances Control Act (TSCA) Polychlorinated biphenyl (PCB) inspection report for the Travis County Texas Electric Cooperatives, which the department has prepared for the Environmental Protection Agency (EPA). We dealt with this matter in OR92-112 (1993), which noted that the Department of Health might have prepared the report as agent of the EPA and might not be the proper custodian of the report.

You submitted a request for reconsideration of OR92-112 by a letter which we designated ID# 15659. You sent us a copy of a letter written by William B. Hathaway, Assistant Regional Administrator for Management of the Environmental Protection Agency, Region 6, stating that it awarded a compliance monitoring agreement to the Department of Health to carry out TSCA PCB inspections. The department does not perform TSCA inspections on its own behalf or pursuant to any state law; the inspections are performed under the authority of TSCA, 15 U.S.C. § 2610 by employees of the department as duly authorized representatives of EPA. The letter continues as follows:

EPA considers any copies of TSCA inspection reports that are kept by TDH inspectors to be EPA records and not TDH records for the reasons stated Therefore, these records would not be subject to the Texas Open Records Act, but would be subject to the Freedom of Information Act (FOIA).¹

¹Mr. Hathaway states that his office has determined that the records are exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b).

Accordingly, the Department of Health is not the custodian of the report for purposes of the Open Records Act, and you need not release it. *See* Open Records Decision No. 576 (1990); *see also* Open Records Decision No. 561 (1990).

If you have any questions with regard to this letter, please contact our office.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/MRC/le

Ref.: ID# 15659

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