



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 29, 1994

Ms. Kathleen Weisskopf  
Assistant City Attorney  
City of Arlington  
P.O. Box 231  
Arlington, Texas 76004-0231

OR94-426

Dear Ms. Weisskopf:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 25553.

The City of Arlington (the "city") has received two requests for information relating to the amounts of money that the city had escrowed in accordance with a certain interim rate order entered by the Texas Natural Resource Conservation Commission. In the latest request, the requestor seeks "all documents showing amounts deposited and interest earned with respect to escrowed monies in accordance with the order entered by the Texas Water Commission on June 16, 1992," including "TexPool confirmations and month end statements, and any staff reports which summarize Arlington's escrowed amounts." You have submitted the requested information to us for review and claim that the city may withhold it from required public disclosure under the Open Records Act.

Section 552.301(a) of the Government Code provides as follows:

A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision within a reasonable time *but not later than the 10th calendar day after the date of receiving the written request.* [Footnote omitted. Emphasis added.]

Section 552.302 provides:

If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information.

The first request to the city was dated November 17, 1993. The city received the second request on March 18, 1994.<sup>1</sup> You requested a determination of this office by letter transmitted by facsimile machine and received on March 31, 1994. On the basis of these facts, we conclude that you failed to request a decision within the ten-day period mandated by section 552.301(a) of the Government Code.

When a governmental body fails to request a decision within ten 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, 381 (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) at 1-2. The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See id.* Normally, a governmental body can overcome the presumption of openness by a compelling demonstration that the governmental body should not release the requested information to the public, *i.e.*, that some other source of law makes the information confidential or that third-party interests are at stake. Open Records Decision No. 150 (1977) at 2. You claim that section 552.103(a) excepts the requested information from required public disclosure. We find that you have not made a compelling demonstration sufficient to overcome the heightened presumption of openness arising from your failure to request a decision of this office within ten days. Accordingly, the city must release the requested information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Rebecca L. Payne  
Section Chief  
Open Government Section

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<sup>1</sup>Although a date-stamp appearing on the request letter indicates that the second request reached the city manager's office on March 23, 1994, a copy of the return-receipt requested card provided by the requestor shows that the city actually received the request on March 18, 1994.

RLP/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 25553

cc: Mr. Gary Steinberger  
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(w/o enclosures)

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