



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 28, 1995

Mr. Delton Keltner  
President  
Crystal Farms Water Supply Corporation  
P.O. Box 1089  
Tatum, Texas 75691

OR95-1022

Dear Mr. Keltner:

We received your request for an open records decision pursuant to section 552.301 of the Open Records Act, chapter 552 of the Government Code.<sup>1</sup> That request was assigned ID# 35357.

The Open Records Act imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the Office of the Attorney General within ten days after the governmental body's receipt of the request for information.<sup>2</sup> The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public.

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<sup>1</sup>Section 552.003(9) provides that a governmental body subject to the Open Records Act includes:

the governing body of a nonprofit corporation organized under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under section 11.30, Tax Code

We assume for purposes of this ruling that the Crystal Farms Water Supply Corporation is a governmental body subject to the Open Records Act.

<sup>2</sup>The Seventy-fourth Legislature significantly amended the Open Records Act effective September 1, 1995. See Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. (codified at Gov't Code ch. 552). We do not address in this ruling the effect the recent amendment to section 552.301 will have on requests for information made on or after September 1, 1995.

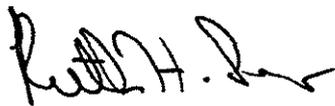
See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On September 1, 1995, we asked you to provide us with copies of the requested records and your arguments for withholding the requested records. To date, we have not received these materials.

The Open Records Act places on the custodian of public records the burden of establishing that records are exempted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Consequently, we find that you have not met your burden under sections 552.301 - .303 of the Government Code and that the information is presumed to be public.

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. See also Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact this office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/rho

Ref.: ID# 35357  
cc: Mr. Ronald Harkins  
c/o Crystal Farms Water Supply Corporation  
P.O. Box 1089  
Tatum, Texas 75691