



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 27, 1996

Mr. Lewis R. Sifford
City Attorney
City of Cedar Hill
Sifford & Anderson, L.L.P.
6300 NationsBank Plaza
901 Main Street
Dallas, Texas 75202

OR96-0255

Dear Mr. Sifford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38392.

The City of Cedar Hill (the "city") received an open records request for "all letters, memos, reports, studies, or other documents relating to [Texas Industries, Inc. ("TXI")], TXI's burning of hazardous waste or TXI's pending hazardous waste permit" You state that the city has made available to the requestor most of the requested information. You seek to withhold certain other documents which you characterize as being "privileged" under Rule 166b of the Texas Rules of Civil Procedure. You have not, however, raised any of the specific exceptions to required public disclosure listed in subchapter C of chapter 552 of the Government Code.

Section 552.301(a) of the Government Code provides:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and *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 *and state the exceptions that apply* within a reasonable time but not later than the 10th calendar day after the date of receiving the written request. [Emphasis added.]

Further, section 552.302 of the Government Code 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.

As noted above, you have raised none of the act's exceptions to required public disclosure. You have only argued that the information at issue is "privileged." Absent a court order compelling nondisclosure of particular information, whether certain information is privileged from discovery and whether that information is subject to required public disclosure under the Open Records Act are two entirely different issues. Open Records Decision No. 416 (1984). We decide here only whether the general public is entitled to the information at issue in accordance with the provisions of the Open Records Act.

Although the attorney general will not ordinarily raise an exception that might apply but which the governmental body has failed to claim, *see* Open Records Decision No. 325 (1982) at 1, we will raise section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352. We note, however, that information that is privileged from discovery is not deemed to be confidential for purposes of section 552.101. In Open Records Decision No. 575 (1990) at 2, this office held that "we do not consider discovery privileges to be covered under [the statutory predecessor of section 552.101]." For "privileged" information to be excepted from required public disclosure under the Open Records Act the information must otherwise come within one of the act's other exceptions to public disclosure. *Id.* Hence, the mere fact that the records may be privileged from discovery has no bearing on whether they are excepted from disclosure under the Open Records Act.

Because you have raised none of the act's specific exceptions to required public disclosure, and none of the information submitted to this office is confidential for purposes of section 552.101 of the Government Code, we conclude that, in accordance with section 552.302, the requested information is deemed public and must be released in its entirety. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Todd Reese". The signature is written in a cursive style with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/RWP/ch

Ref.: ID# 38392

Enclosures: Submitted documents

cc: Mr. Jim Schermbeck
401 Wynnewood Village, # 138
Dallas, Texas 75224
(w/o enclosures)