



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1996

Mr. Stuart W. Bowen, Jr.
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR96-1312

Dear Mr. Bowen:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37899.

The Governor's Office received a request for information concerning "opposition to or concern about the siting of a radioactive waste disposal facility in the area of Sierra Blanca, Hudspeth County, Texas." You assert that the requested information is excepted from disclosure pursuant to section 552.111 of the Government Code.

Although you received the request on December 11, 1995, you did not request a decision from this office until December 27, 1995. Section 552.301 of the Government Code provides that:

(a) 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 [chapter 552] 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.]

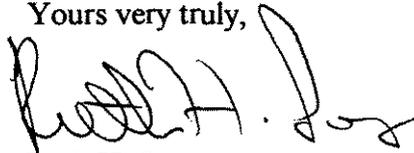
Chapter 552 thus imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for

information. Failure to abide by this provision results in the presumption that information is public. Gov't Code § 552.302.

The presumption that information is public when the ten day deadline is not met can only be overcome by a compelling demonstration that the information at issue should not be made public, such as when information is made confidential by other law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing information was made confidential by other law or affects third party interests). As section 552.111 is a discretionary exception that can be waived, you have waived your section 552.111 argument by failure to timely submit your request to this office. *See* Open Records Decision No. 470 (1987) at 2-3 (552.111 is discretionary exception).

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 37899

Enclosures: Submitted documents

cc: Mr. David Frederick
Johnson, Hess & Frederick
202 West 17th Street
Austin, Texas 78701
(w/o enclosure)