



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 9, 1996

Mr. Bill Ballard  
Attorney  
Enforcement Coordination and Litigation Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR96-1637

Dear Mr. Ballard:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 33322.

The Texas Natural Resource Conservation Commission (the "TNRCC") received a request for information under the act on March 30, 1995. You requested a decision from this office on May 1, 1995. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold.<sup>1</sup> When a governmental body fails to request a decision within ten days of receiving a request for information,

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<sup>1</sup>The act contains no provisions authorizing a governmental body to waive, by agreement or otherwise, its requirement to comply with the provisions of section 552.301(a). In Open Records Decision No. 333 (1982) at 2-3, however, this office concluded that when there is legitimate confusion as to the scope of an open records request, the ten-day rule may be tolled until such time that the request is clarified. See Open Records Decision No. 333 (1982) at 2-3. In the present case, TNRCC "requested . . . an extension of time to comply with the open records request by Mr. Hamel." As there was no confusion regarding the scope of the request, we believe that TNRCC had no authority to extend the ten-day time limit imposed by section 552.301(a).

the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (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). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock* at 381.

You have not shown compelling reasons why the information at issue should not be released. See Open Records Decision No. 630 (1994) (concluding that the mere fact that information may fall within the attorney-client privilege under section 552.107(1) is not a compelling reason to overcome the presumption of openness that arises when a governmental body fails to request an attorney general decision within ten days of receiving the request for information). The information is presumed to be public and must be released.

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,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/rho

Ref: ID# 33322

Enclosures: Submitted documents

cc: Mr. Lee Hamel  
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(w/o enclosures)