



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 24, 1997

Mr. Rick Perry
Commissioner
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR97-0599

Dear Commissioner Perry:

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# 104561.

The Texas Department of Agriculture (the "department") received a request for information concerning Complaint Number 01-97-0014 involving the improper use of pesticides. You indicate the complaint is under investigation and is still pending in the field. Some documents were released to the requestor. However, the department seeks to withhold the remaining information based on section 552.103 of the Government Code. You enclose the documents you seek to withhold.

Section 552.301 of the Government code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth day after the date of receiving the written request. The department received the written request for information on December 16, 1996. You requested a decision from the Attorney General via interagency mail, which this agency did not receive until December 30, 1996, more than ten days after the requestor's written request. Therefore, we conclude that the department failed to meet its ten-day deadline for requesting an opinion from this office.¹

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 (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

¹See Government Code § 552.308 (discusses timely submission of request).

Records Decision No. 319 (1982); Gov't Code § 552.302. The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is 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. Consequently, we conclude that you may not rely upon section 552.103 to withhold the requested information. As you raise no other exceptions to disclosure, you must release the requested information to the requestor.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 104561

Enclosures: Submitted documents

cc: Mr. Pedro Cordero
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(w/o enclosures)