



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 16, 1997

Ms. Judith Doran
Open Records Coordinator
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

OR97-1405

Dear Ms. Doran:

You ask that we reconsider our decision in Open Records Letter Nos. 97-0441 (1997), and 97-0893 (1997). We assigned your request for reconsideration ID# 107379.

The Texas Parks and Wildlife Department (the "department") received a request for the requestor's personnel records, records relating to her employment, and records relating to her sexual harassment complaint. We understand that the department released some of the responsive records. In your first request for a ruling from this office, you contended that all of the documents submitted to this office are excepted from disclosure pursuant to a common-law right of privacy under section 552.101 of the Government Code. Additionally, you claimed that some of the documents are excepted from disclosure under sections 552.103, 552.107 and 552.111 of the Government Code. This office determined that the department had not timely requested an open records decision and therefore waived Government Code sections 552.103, 552.107(1) and 552.111. We also concluded that common-law privacy protected some of the information from required public disclosure.

Generally, 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 Publ'g 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 id.* A compelling interest includes the fact 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. In addition, the need of another governmental body to withhold the requested information may provide a compelling reason to overcome the presumption of openness. Open Records Decision No. 586 (1991).

In this instance, we understand that the Office of the Attorney General is representing the department in litigation regarding the sexual harassment complaint and has requested that the department not release the requested records. We conclude that you have presented this office with a compelling demonstration as to why the requested information should be withheld pursuant to section 552.103. You may therefore withhold the remaining requested records under section 552.103. Open Records Letter Nos. 97-0441 (1997), and 97-0893 (1997) are overruled to the extent of conflict.

We are resolving this matter with this 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 may 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# 106147

Enclosures: Submitted documents