



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 14, 1997

Ms. Kathryn Reed  
General Counsel  
Texas Animal Health Commission  
P.O. Box 12966  
Austin, Texas 78711-2966

OR97-1580

Dear Ms. Reed:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 107255.

The Texas Animal Health Commission (the "commission") asked this office to determine whether certain records must be publicly disclosed. The commission received a request for "any and all communication, in any medium (electronic, paper, or otherwise), between (to and from) the Executive Director and/or General Counsel and the Commissioners of the Animal Health Commission for the period beginning January 1, 1996 through the present." The requestor also asked for copies of all future communications through 1997.

We note initially that chapter 552 applies only to information in existence as of the date of the request. Gov't Code § 552.002; Open Records Decision No. 452 (1986) at 3 (open records request applies to information in existence when request is received); 362 (1983) at 2 (city does not have to supply information which does not exist). Further, a governmental entity is not required to comply with a continuing request for information or for documents that may be created in the future. Attorney General Opinion JM-48 (1983). Therefore, in this letter we will consider whether the commission must release the responsive records that were in existence as of the date of the requestor's letter. The request letter is dated April 23, 1997 and was received by the commission on that date.

You assert that section 552.101 and 552.107(1) of the Government Code except the requested records from disclosure. However, you did not submit to this office copies of the documents requested or representative samples of those documents. Section 552.301(a) of the Government Code provides that "[ 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 to disclosure" must ask this office for a decision and state the exceptions that apply. Section 552.301(b) provides that when the governmental body requests a decision from this office, the governmental body must provide to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

In accordance with 552.303(c) of the Government Code, this office notified you by facsimile on May 21, 1997, that you had failed to submit a copy of the specific information requested or a representative sample of the records, as required by section 552.301(b). We requested that you provide a copy of the information requested or a representative sample to our office within seven days from the date of receipt of the facsimile notice. The notice further stated that, pursuant to section 552.303(e), failure to supply this information would result in the legal presumption that the information at issue is public.

Since you have failed to supply the information needed for this office to render a decision, as provided under section 552.303(e), the information that is the subject of this request for information is presumed to be public information. This presumption of openness can be overcome only by a demonstration that the information at issue is confidential by law or that other compelling reasons exist as to why the information should not be made public. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982); *see also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). As you have not provided this office with a compelling reason, we have no basis on which to conclude the commission may withhold the information at issue.

If you have any questions regarding this matter, please contact this office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 107255

cc: Mr. Victor Gonzalez  
c/o Ms. Kathryn Reed  
Texas Animal Health Commission  
P.O. Box 12966  
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