



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 7, 1998

Ms. Lisa Ortiz Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR98-0074

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112190.

The City of Corpus Christi (the "city") received a request for twenty items of information. You do not inform this office of the date the city received this request. The request is dated August 25, 1997. This office notified the city's Wastewater Superintendent, Mr. Wayne R. Cockroft, on October 27, 1997, that the city must seek an open records decision from this office if it wishes to withhold requested information from required public disclosure. Letter from Mr. Craig Leavers, Investigator, Open Records Division of the Office of the Attorney General, to Mr. Wayne R. Cockroft, Wastewater Superintendent, Wastewater Division of the City of Corpus Christi, (October 27, 1997); *see* Gov't Code § 552.301(a). This office received the city's request for an open records decision about the applicability of the informer's privilege to request item 16, the "[n]ames of all the operators who reported all the violations on the Contemplated Disciplinary Letter dated August 18, 1997."

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 [act's] exceptions . . . 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 business day after the date of receiving the request.*

For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission. (Emphasis added.)

Since it appears that this office did not receive the city's request for a decision within the ten-day period, the city failed to seek our decision within the ten-day period mandated by section 552.301(a). Because the city did not request an attorney general decision within the deadline provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. When an exception to disclosure that is designed to protect the interests of a third party is applicable, the presumption of openness may be overcome. *See* Open Records Decision No. 552 (1990).

The city raises the informer's privilege to protect the identities of operators who you say reported violations of Texas Natural Resource Conservation Commission and Environmental Protection Agency regulations to the city. This office has applied the informer's privilege to protect the identity of a person who reports a violation or possible violation of the law to officials charged with the duty of enforcing the particular law. *See* Open Records Decision No. 515 (1988). The informer's privilege protects a governmental body's interests and may therefore be waived by the governmental body. *See* Open Records Decision No. 549 (1990). Thus, even assuming the privilege covered the operators in this case--a determination we do not make--we conclude that the city waived the privilege by its failure to raise the privilege within the ten-day period.

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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

Ref.: ID# 112190

Enclosures: Submitted documents

cc: Mr. Andrew Levine  
1005 Collingswood  
Corpus Christi, Texas 78412  
(w/o enclosures)