



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 15, 1989

147

Mr. Glenn Stewart
City Attorney
City of Corsicana, Texas
P. O. Box 628
Corsicana, Texas 75110

Re: ID# 5975

Dear Mr. Stewart:

This office previously received your request for an Open Records Decision as to whether the Civil Service Commission records of an unsuccessful job applicant must be released to the applicant. In our letter to you of April 11, 1989, ID# 5975, we requested that you submit copies of the requested documents to this office within ten days of your receipt of the letter, with the caveat that your failure to do so would result in the waiver of the act's exceptions to required public disclosure; the information would be presumed public.

Our records show that you received ID# 5975 on April 14, 1989. More than 10 days have elapsed since your receipt of that letter, but you have failed to provide this office with copies of the requested documents or your arguments as to why they should not be released.

Section 7(a) of the Open Records Act, article 6252-17a, V.T.C.S., provides:

If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not

so requested, the information shall be presumed to be public information. (Emphasis added.)

Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information the governmental body wishes to withhold. In placing a time limit on the production of public information, the legislature recognized the value of timely production of public information. See also art. 6252-17a, section 4 (shall "promptly" produce public information), section 13 (may promulgate rules to ensure that "public records may be inspected efficiently, safely, and without delay").

When a governmental body fails to request a decision within 10 days of receiving a request for information, the information at issue is presumed public. City of Houston v. Houston Chronicle Publishing Company, 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. Open Records Decision No. 319.

You have not shown compelling reasons why the information at issue should not be released. We note, however, that some of the documents contained in the requested file are deemed confidential by statute or federal administrative regulation:

- 1) criminal history information obtained from the Federal Bureau of Investigation (28 C.F.R. §§ 20.30, 20.33);
- 2) records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician (V.T.C.S. article 4495b, § 5.08(b);
- 3) declarations by psychologists or psychiatrists of psychological and emotional health (Gov't Code § 415.057); and
- 4) the results of polygraph examinations (V.T.C.S. article 4413(29cc), § 19A)

These documents are not public information. This ruling does not address whether the requestor has a special right of access to these documents. See generally Attorney General Opinion MW-95 (1979).

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The remaining information, however, is presumed public and must be released. Please be advised that failure to provide information that the attorney general has determined to be public may give rise to an action for a writ of mandamus pursuant to section 8 of the Open Records Act or to criminal sanctions under section 10 of the act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-147.

Yours very truly,

*Open Government Section
of the Opinion Committee* 

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/bc

Ref: ID# 5975