



**THE ATTORNEY GENERAL
OF TEXAS**

September 12, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable John B. Holmes, Jr.
District Attorney
Harris County, Texas
201 Fannin, Suite 200
Houston, Texas 77002

Dear Mr. Holmes:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 7295; this decision is OR89-290.

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.)

You received a request for information under the Open Records Act on July 31, 1989. You requested a decision from this office on August 15, 1989. Consequently, you failed to request a decision within the 10 days required by section 7(a).

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 V.T.C.S. art. 6252-17a, § 4 (shall "promptly" produce public information), § 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 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. Open Records Decision No. 319; see also City of Houston v. Houston Chronicle Publishing Co., 673 S.W.2d at 323 (suggesting that governmental body must show constitutional basis for withholding information after the 10 day limit has passed).

You have not shown compelling reasons why the information at issue should not be released. The information is presumed public information 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.

The same individual who made the open records request discussed above made two additional requests for information. You state, however, that the requested information in the two subsequent requests does not exist. The Open Records Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986). You need not, therefore, respond to these two requests.

Finally, with regard to your assertion that section 3(a)(8) is a broad exception, please note that the express language of the act requires that its provisions must be "liberally construed in favor of the granting of any request for information." Art. 6252-17a, § 14(d). Accordingly, all the act's exceptions must be construed narrowly, not broadly as you suggest. This office's statements regarding "unduly interfere with law enforcement, and crime prevention" as the test under section 3(a)(8) stems from a Texas Supreme Court decision, Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).

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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 OR89-290.

Yours very truly,
Open Government Section
of the Opinion Committee 

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

JSR/RWP/bc

cc: Mr. Rayford Leach
516541
P. O. Box 16
Lovelady, Texas 75851

Ref.: ID# 7295