



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 8, 1995

Mr. Charles J. Jacobus
Jacobus, Boltz & Melamed, L.L.P.
Three Riverway, Suite 450
Houston, Texas 77056-1910

OR95-1197

Dear Mr. Jacobus:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33169.

On April 3, 1995, the City of Bellaire (the "city"), which you represent, received two open records requests from Mr. Randy Pollard for certain correspondence you wrote. The first request was for the "Chuck Jacobus letter on or about March 16, 1995 regarding proposed revision of Ordinance 91-072." The second request was for a "Title opinion/report on east/west easements repeatedly promised by Mr. Jacobus to the Pollard's attorney but never furnished." On behalf of the city, you have submitted arguments to this office that the correspondence in question is excepted from required public disclosure pursuant to the attorney-client privilege as incorporated into section 552.107(1) of the Government Code. However, you did not submit your arguments to us until April 20, 1995. Consequently, you failed to request an open records decision from this office within the ten days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body either to release requested information or, if the governmental body wishes to withhold the information in question, to seek an open records decision from the attorney general within ten days of receiving the request for information. 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. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *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). This presumption of openness attaches to information that could normally be

withheld from the public pursuant to the attorney-client privilege. See Open Records Decision No. 630 (1994). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381.

You have not shown compelling reasons why the information at issue should not be released. The mere fact that information falls within section 552.107(1) is not a "compelling reason sufficient to overcome the presumption of openness that arises when a governmental body fails to request an attorney general decision within 10 days of receiving an open records request." Open Records Decision No. 630 (1994) at 6-7. The requested information is therefore presumed to be public and must be released in its entirety.

We are resolving this matter with an 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 should not be relied upon as a previous determination under section 552.301 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/RWP/rho

Ref: ID# 33169

Enclosures: Submitted records

cc: Mr. Randy D. Pollard
5123 Linden
Bellaire, Texas 77401
(w/o enclosures)