



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 14, 1995

Ms. Raenell Silcox  
Attorney  
Resource Protection Division  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

OR95-1426

Dear Ms. Silcox:

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# 36889.

The Texas Parks and Wildlife Department (the "department") received an open records request for information relating to several specified sites. The department received the request on October 23, 1995, but did not request a decision from this office until November 3, 1995. You have submitted to this office for review a representative sample of the requested information that you contend is excepted from disclosure under sections 552.101, 552.103, 552.107 and 552.111 of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. *See Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 18, 1995 Tex. Sess. Law Serv. 5127, 5139 (Vernon).* The department failed to request a decision within ten days as required by section 552.301(a). 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). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See Hancock*, 797 S.W.2d at 381.

Although you contend that sections 552.103, 552.107, and 552.111 of the Government Code except the information from required public disclosure, you have not presented compelling reasons for withholding the records under these exceptions. The

mere fact that the information is within the attorney-client privilege and thus would be excepted from disclosure under section 552.107(1) of the Government Code if the governmental body had made a timely request for an open records decision does not alone constitute a compelling reason to withhold the information from public disclosure. Open Records Decision No. 630 (1994). In addition, a governmental body's failure to meet the ten-day deadline waives the protection of sections 552.103 and 552.111. Open Records Decision No. 473 (1987). We conclude that the department has waived the protection of these three exceptions.

You also raise section 552.101 of the Government Code which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You do not cite, nor are we aware of, any statutory law or judicial decision that would make the requested information confidential by law. You must therefore release the requested information 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/ch

Ref.: ID# 36889

Enclosures: Submitted documents

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