



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 20, 1995

Ms. Gail Fenter  
Assistant City Attorney  
The City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR95-1543

Dear Ms. Fenter:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.<sup>1</sup> Your request was assigned ID# 37021.

The City of Midland received an open records request on October 28, 1995. Your letter to this office requesting an open records decision is dated November 8, 1995, and is postmarked as of that date. You therefore failed to request a decision from this office within the ten days required by section 552.301 of the Government Code, as the tenth day was November 7, 1995.

Section 552.301 requires a governmental body to release the requested information or to request a decision from the attorney general within ten days of receiving the request if it is information the governmental body wishes to withhold. If the

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<sup>1</sup>We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (to be codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*

governmental body fails to request a decision within ten days of receiving the open records request, the information at issue is presumed public. The governmental body must show a compelling interest to withhold the information to overcome this presumption, such as a confidentiality statute or protection of third party interests which have been recognized by the courts. *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 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision Nos. 319 (1982), 150 (1977), 26 (1974).

You have not shown any compelling reasons why the requested information should not be released. You assert that the information may be excepted by section 552.103 of the Government Code. However, this exception does not require information to be kept confidential nor does it protect the interests of third parties. It is a discretionary exception. Gov't Code § 552.007; Open Records Decision No. 473 (1987) at 2 (section 552.103 waived by failure to raise it within the ten day deadline). Therefore this information is presumed to be public and must be released.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/rho

Ref.: ID# 37021

Enclosures: Submitted documents

cc: Mr. Charles N. Wallace, Jr.  
P.O. Box 2918  
Midland, Texas 79702  
(w/o enclosures)