



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 7, 1997

Mr. Rick Illgner  
General Manager  
Edwards Aquifer Authority  
P.O. Box 15830  
San Antonio, Texas 78212-9030

OR97-0733

Dear Mr. Illgner:

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# 104977.

The Edwards Aquifer Authority (the "Authority") has received two requests, one written and one oral, for information regarding "all applications for initial Regular Permits and supporting documentation filed with the Edwards Aquifer Authority before, on, or after December 30, 1996."<sup>1</sup> You contend that the Authority has been responding to public requests for "certain identified applications."<sup>2</sup> However, you claim that with regards to the pending request for "all" applications the sought information is "in active use," and thus subject to section 552.221 of the Government Code. We have considered the arguments you make and have reviewed the submitted documents.

Section 552.221 of the Government Code, provides in pertinent part:

(c) If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

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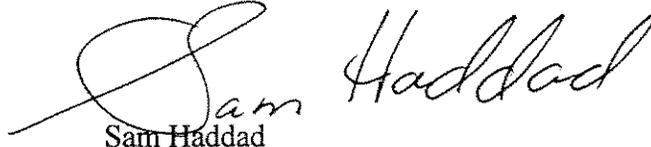
<sup>1</sup>In regards to the oral request for information, we note that the Open Records Act does not require governmental body to produce information in the absence of written request. *See* Open Records Decision No. 304 (1982).

<sup>2</sup>In your letter to our office, you state that "[t]hose requests are being filled." From this assertion, we presume that you are releasing the requested information for those requests which identify specific applications, instead of the broad request for "all" applications.

In your letter to our office you state that the Authority will certify to the requestor that the requested information is "in active use."<sup>3</sup> Specifically, you assert that "during this temporary period of active review that the Authority believes it is consistent and in the public's interest to limit access." We note that the claim that information is in "active use," simply permits the Authority to avoid unreasonable disruption of its immediate business by scheduling a more convenient, but reasonable, time to provide the information. Open Records Decision Nos. 148 (1976), 121 (1976). In other words, the information may be withheld only while in use. Gov't Code § 552.221(c); Open Records Decision No. 225 (1979). If the information is not now in active use, the Authority may not withhold it unless an exception to disclosure applies. We conclude that the requested information may be withheld from required disclosure, while "in active use" and so long as a "reasonable time" is set when the information will be available for inspection or duplication by the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.<sup>4</sup> 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 any questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref: ID# 104977

Enclosures: Submitted documents

cc: Mr. C. Thomas Koch  
Vice-President  
C. Thomas Koch, Inc.  
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Blanco, Texas 78606  
(w/o enclosures)

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<sup>3</sup>You state that the Authority will set a date and time when the information will be available for the requestor to inspect or duplicate.

<sup>4</sup>In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.