



May 6, 1999

Ms. Susan Combs
Commissioner
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711-2847

OR99-1240

Dear Ms. Combs:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123213.

The Texas Department of Agriculture (the "department") received an open records request for the department's investigation report regarding TDA Incident No. 2424-01-99-0005. You seek to withhold the requested information pursuant to section 552.103 of the Government Code.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. You state that the department received the written request for information on December 22, 1998. This office did not receive your request for a decision until January 12, 1999, more than ten business days after the department's receipt of the written request. Given the evidence before us, we therefore must conclude that the department failed to timely request an open records decision from this office.¹

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g 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 id.* Normally, a

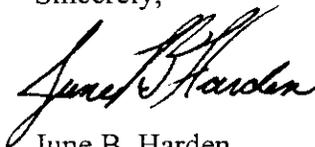
¹See Gov't Code § 552.308 (discussing timely submission of ruling request when request is sent by United States mail). Because your request does not contain a United States postmark, we are unable to conclude that section 552.308 applies to this request.

compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

In this instance, you have not presented this office with a compelling demonstration as to why the requested information should be withheld pursuant to section 552.103. We, therefore, deem this exception to required public disclosure as being waived. After reviewing the information at issue, this office could discern no information made confidential by law or that implicated a third party's privacy or proprietary interests. We, therefore, conclude that the department must release the requested information to the requestor 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 regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/ch

Ref.: ID# 123213

Enclosures: Submitted documents

cc: Mr. Fred Griffin
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(w/o enclosures)