



May 11, 1999

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

OR99-1279

Dear Commissioner Combs:

You ask that we reconsider our conclusion in Open Records Letter No. 99-0087 (1999), which concerned a request for information about an investigation into possible violations of state or federal pesticide laws. Your request was assigned ID# 123378.

Open Records Letter No. 99-0087 determined that the Department of Agriculture (the "department") had failed to timely submit its request for an open records ruling in accordance with section 552.301 of the Government Code and that consequently the department had waived section 552.103 of the Government Code.¹ You now argue that the department timely submitted its request for a ruling and that the department may withhold the requested information from required public disclosure based on section 552.103 of the Government Code. You also suggest that we determine that the department's enforcement files for open cases "are generally excepted from disclosure under" section 552.103.

Section 552.301 of the Government Code provides in part that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions [to required disclosure under the Public Information Act (the "act")] . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the request.

¹See Open Records Decision No. 591 at 2, note 2 (1991).

Gov't Code § 552.301(a). Section 552.301 requires a governmental body to ask for a decision within the ten-day deadline. You informed us in your original request that the department received the request for information on December 7, 1998. This office received the department's request for a decision on December 28, 1998. You state that the department deposited its request for an attorney general decision in interagency mail on December 21, 1998, the tenth business day after the department received the request.

Section 552.308 of the Government Code is the only provision in the act that addresses the timeliness of submissions to this office. The provision, which establishes a "mailbox rule" for determining when a request has been timely submitted, reads as follows:

When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail properly addressed with postage prepaid and:

(1) it bears a post office cancellation mark indicating a time within the period; or

(2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within the period.

Section 552.308 refers only to mail sent by first class United States mail. Therefore, we do not believe section 552.308 applies to mail sent by interagency mail. Since the act does not provide a comparable "mailbox rule" for requests submitted by means other than U.S. mail, such requests are considered to be timely made only upon receipt by the Office of the Attorney General. This interpretation has been the consistent opinion of this office. *See, e.g.,* OR 97-0599 issued to your predecessor. As stated above, the department's request was not sent by first class United States mail, but rather by interagency mail. Therefore, the timeliness of this request is governed by section 552.301 and not section 552.308. As we determined in Open Records Letter No. 99-0087 (1999), we must conclude that the department failed to meet the section 552.301 deadline. Consequently, the department waived section 552.103. *See* Open Records Decision No. 591 at 2, note 2 (1991). Open Records Letter No. 99-0087 (1999) is affirmed.²

²We note that legislation pending before the Texas Legislature this session would amend section 552.308 to provide that a ruling request submitted by interagency mail is considered to be timely upon its deposit in interagency mail. *See* S.B. 1851, §26 (engrossed version).

Enforcement files for open cases are generally excepted from disclosure under section 552.103. We interpret this suggestion to mean that you ask that we determine that the department may rely on this ruling as a previous determination under section 552.301(a) of the Government Code concerning the applicability of section 552.103 for all of the department's enforcement files for open cases. In light of our conclusion that the department has waived section 552.103 in this case, we do not address this question.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Kay H. Hastings
Deputy Chief
Open Records Division

KHH/eaf

Ref.: ID# 123378

encl: Submitted documents

cc: Mr. Michael Petty
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(w/o enclosures)