



May 18, 1999

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

OR99-1369

Dear Commissioner Combs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123472.

The Texas Department of Agriculture (the "department") received a request for "a copy of the TDA Case # 01-99-0002." You assert that the requested information is excepted from required public disclosure based on sections 552.101, 552.103 and 552.107(1) of the Government Code.<sup>1</sup> We conclude that because the department did not timely submit to this office its request for a decision, the department has waived the claimed exceptions.

Section 552.301(a) 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 [act's] exceptions . . . 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.

You inform us that the department received the request for information on January 7, 1999. This office received the department's request for an open records ruling on January 25, 1999. Thus, this office did not receive the request for a decision within the tenth business day period mandated by section 552.301(a), which in this case ended January 22, 1999. Section

---

<sup>1</sup>You argue that the case summary document is excepted under section 552.101 as attorney work product. Attorney work product is properly raised under section 552.111 of the Government Code.

552.308 of the Government establishes a "mailbox rule" for determining when a request has been timely submitted, but this provision only applies to mail sent by first class United States mail. *See* Open Records Letter No. 99- 1279 (1999) (holding section 552.308 inapplicable to interagency mail). We have no proof that the department sent the request by first class United States mail within the ten business day time period or otherwise delivered it such that this office received it within the deadline. Accordingly, we must conclude that this office did not timely receive the department's request for a decision.

Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public information that must be released, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381; *see* Open Records Decision No. 630 (1994). You have not raised any specific compelling reasons to overcome the presumption that the information is public. Thus, we conclude that the department must release the information to the requestor.

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,



Kay H. Hastings  
Assistant Attorney General  
Open Records Division

KHH/eaf

Ref.: ID# 123472

encl. Submitted documents

cc: Mr. Donald Kubecka  
Kubecka Operating Company, Inc.  
DBA Ag Aero  
Route 4, Box 417  
Seminole, Texas 79360  
(w/o enclosures)