



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 6, 1995

Ms. Susan L. Wheeler  
Associate University Counsel  
University of Houston System  
1600 Smith, Suite 3400  
Houston, Texas 77002

OR95-1357

Dear Ms. Wheeler:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552, and have also requested reconsideration of our rulings in Open Records Letter Nos. 93-759 (1993) and 94-272 (1994). We assigned both requests ID# 29315.

We first consider your request for reconsideration. In Open Records Letter No. 93-759 (1993), this office considered the applicability of section 552.111 of the Government Code to information relating to the tenure, promotion, and salary increases of university faculty. Relying on Open Records Decision No. 615 (1993), we concluded that section 552.111 does not except the requested information from required public disclosure. In Open Records Letter No. 94-272 (1994), this office considered the applicability of section 552.111 to similar information and concluded, on the same grounds, that section 552.111 does not except the information from required public disclosure.

We decline to reconsider these rulings. You have failed to raise any arguments not already addressed in Open Records Decision No. 615 (1993). That decision adequately

addresses the issues you now raise. Our rulings in Open Records Letter Nos. 93-759 (1993) and 94-272 (1994) therefore stand. You must release the information at issue in those rulings *promptly*.<sup>1</sup>

Now we address the request at issue here. The University of Houston System (the "university") has received a request for information relating to faculty merit raises. Specifically, the requestor seeks:

1. Copies of the 1993-94 Merit Evaluation Forms for all faculty at University of Houston-Victoria along with their justification statements. . . .
2. Copy of the merit pay salary schedule for Spring and June. . . .

You claim that section 552.111 of the Government Code exempts the requested information from required public disclosure. However, we note that the university received the open records request on July 22, 1994 but did not request a determination of this office until September 19, 1994. We conclude that you have failed to request a decision within the ten-day period mandated by section 552.301(a) of the Government Code.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't. Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982) at 1-2. The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See Hancock*, 797 S.W.2d at 381. Normally, a governmental body can overcome the presumption of openness by a compelling demonstration that the governmental body should not release the requested information to the public, *i.e.*, that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2; *see also* Open Records Decision No. 630 (1994) (distinguishing between mandatory and nonmandatory exceptions to required public disclosure). You have not demonstrated that the requested information is made confidential by law or that third party interests are at stake here. Accordingly, we conclude that you may not withhold the requested information under section 552.111 of the Government Code. The university must promptly release the requested information in its entirety.

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<sup>1</sup>We remind you that failure or refusal to release information subject to required public disclosure is a criminal violation. *See* Gov't Code § 552.353(a).

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Todd Reese". The signature is written in a cursive style with a long horizontal line extending to the right.

Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/MAR/rho

Ref.: ID# 29315

Enclosures: Submitted documents

cc: Mr. Jim Herrington  
Texas Faculty Association  
1415 Southmore  
Houston, Texas 77004  
(w/o enclosures)