



November 1, 1999

Ms. Joanne Wright  
Associate General Counsel  
Texas Department of Transportation  
Dewitt C. Greer Sate Highway Bldg.  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR99-3073

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128682.

The Texas Department of Transportation (the "department") received a request for the 1) applications of applicants who interviewed for JVN #9-52-M230-994, 2) interview questions, 3) interviewed applicants' answers and interviewer's scores, 4) preferred answers, and 5) KSA (Knowledge, Skill, and Ability) criteria and scores. You state that you will provide the requestor with "the applications, scores, and those items that evaluate only the applicant's job performance or suitability." However, you claim that the interview questions and answers and KSA grading criteria are test items which are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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.<sup>1</sup> The department received the requestor's written request for information on July 30, 1999. You did not

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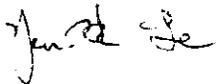
<sup>1</sup>The Seventy-sixth amended sections 552.301 and 552.302 of the Government Code. Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 20, 1999 Tex. Sess. Law Serv. 4500 (Vernon). The amendment applies to a governmental body's request for an attorney general decision made on or after September 1, 1999, the effective date of the amendment. Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 36, 1999 Tex. Sess. Law Serv. 4500, 4514 (Vernon).

request a decision from this office until August 16, 1999, more than ten business days after the requestor's written request. Therefore, we conclude that the department failed to meet its ten-day deadline for requesting an opinion from this office.

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. Gov't Code § 552.302; *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 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). You have not demonstrated that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public; therefore, the department must release the information.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/ljp

Ref.: ID# 128681

Encl. Submitted documents

cc: Ms. Sue Ermis  
7103 Darcus Cv.  
Austin, Texas 78759  
(w/o enclosures)