



January 25, 2000

Mr. Kevin McCalla
Director, General Law Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR2000-0261

Dear McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131505.

The Texas Natural Resource Conservation Commission ("TNRCC") received a request for information regarding job posting number 00023. You indicate you have provided the requestor with some of the information responsive to the request. You have provided for our review representative samples of the interview questions and answers, marked by you as attachments "B" and "C."¹ You assert that the interview questions and answers are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note at the outset that TNRCC received the request for information on November 1, 1999. Your letter seeking a decision was not received by this office until November 18, 1999. The envelope contains a postal meter imprint of November 17, 1999. Thus, TNRCC failed to request a decision from this office within the ten business day statutory period as

¹In reaching our conclusion here, we assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

required under Government Code section 552.301.² See Gov't Code § 552.301(b). 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). The presumption of openness can be overcome only by a compelling demonstration that the information must not be released, e.g., where it is made confidential by other law or where third party interests are at issue. Open Record Decision No. 150 (1977). We find no information in the submitted documents that is made confidential by law, nor is it apparent that any of the submitted information implicates the proprietary or privacy interests of a third party. Because there is no indication of any compelling interest to overcome the presumption that the information at issue is public, you must release the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

²Because November 11, 1999 was a state holiday (Veteran's Day), we assume TNRCC did not conduct business on that day. We have accordingly calculated the tenth business day from the date TNRCC received the request to be November 16, 1999. You have not advised this office that TNRCC did not conduct business on any of the other weekdays during the period in question.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID# 131505

Encl. Submitted documents

cc: Mr. Thomas O. Moore
8004 Briarton Drive
Austin, Texas 78747
(w/o enclosures)