Office of the Attorney General - State of Texas
JOHN CORNYN

July 13, 2000

Ms. Elizabeth Mendez
City Secretary
City of Nolanville
P.O. Box 128
Nolanville, Texas 76559

OR2000-2638

Dear Ms. Mendez:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 138264.

The City of Nolanville (the "city") received two requests from the same requestor for a copy of any job application information in the city's possession relating to a named individual. You claim that the information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code requires a governmental body to release requested information or to request a decision from the Attorney General within 10 business days of receiving a request for information the governmental body wishes to withhold. Because you do not inform us otherwise, we assume that your office received the first request for information on the date the request was apparently written, May 14, 2000. You did not request a decision from this office until June 19, 2000. Consequently, you failed to request a decision within the 10 business days required by section 552.301(b) of the Government Code. When a governmental body fails to request a decision within 10 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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); *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). Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock*, 797 S.W.2d at 381-82. The exception which you assert, section 552.103, is a discretionary exception and as such, does

not constitute a compelling reason to withhold information that is presumed public. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 522 at 4 (1989) (discretionary exceptions in general). *See also* Gov't Code § 552.007(a); *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475, 476 (Tex. App.--Dallas 1999, no pet.) (governmental body may waive litigation exception, section 552.103). As such, the city has waived its claimed exception under section 552.103 by failing to meet the requirements of section 552.301.

However, the submitted document contains information that is excepted from public disclosure by section 552.117 of the Government Code. Exception from disclosure under section 552.117 overcomes the presumption of openness created by a failure to comply with the requirements of section 552.301. You have submitted the resume of an individual who appears to be a peace officer. Section 552.117(2) requires the city to withhold the home address, telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, without regard to that officer's election under section 552.024. Therefore, you must redact the home address and telephone number of the peace officer named in the submitted document. We have marked the submitted document to indicate the information that is or may be subject to section 552.117. You must release the rest of the requested information to the requestor.

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).

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,

Amanda Crawford

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/ljp

Ref: ID# 138264

Encl. Submitted documents

cc: Ms. Staci Lane
P.O. Box 154232
Waco, Texas 76715
(w/o enclosures)