



January 5, 2001

Ms. Melanie Helms
Human Resources Manager
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2001-0038

Dear Ms. Helms:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142975.

The City of Bryan (the "city") received a request for information which you indicate concerns the city's public power utility. You claim that the requested information is excepted from disclosure under sections 552.104 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Before we address your claimed exceptions to disclosure, we begin with a procedural matter. In particular, we are concerned that the city has failed to comply with section 552.301(e)(1)(B) of the Government Code, which requires the city to submit to this office a copy of the written request for information. You state that a copy of the request is attached to your brief to this office as exhibit A. Exhibit A consists of a one page document that lists thirty-eight staff positions of Texas A & M University and the same number of City of Bryan positions with what appears to be the hourly rate salaries for each position. This document is identical to the document the city submitted as exhibit C and referred to as the record in question. Exhibit C, however, differs from exhibit A in that much of the information is blackened and that for eight of the positions, the city has written in ink different salary rates and indicated on the document that the rates written in blue ink are those being requested. Standing alone, exhibit A does not appear to be a request for information. Exhibit A can only be understood as a request for information if it was either 1.) accompanied by another document that evidences a requestor's desire to obtain particular

information or 2.) submitted at the time the requestor orally requested the information.¹ In either case, submission of exhibit A does not comport with the Act's requirement that a governmental body which requests an open records ruling provide the attorney general with a copy of the written request for information. Exhibit A, without more, does not enable the city or this office to reasonably ascertain what information the requestor seeks. The effect of this procedural shortcoming is that the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. A compelling reason exists if the information is made confidential by law or if the release of the information implicates the privacy or proprietary rights of a third party. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (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); Open Records Decision No. 319 (1982), 150 (1978).

We do not believe that the applicability of either of your claimed exceptions, section 552.131 or section 552.104, compels us to overcome the presumption of openness. Section 552.131 excepts from disclosure a public power utility's information related to a "competitive matter." Gov't Code § 552.331(b). A "competitive matter" is defined as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity, and the release of which would give an advantage to competitors or prospective competitors. Gov't Code § 552.131(a)(3). Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See Open Records Decision No. 592 (1991)*. Thus, both of these exceptions protect a governmental body's competitive interest. Such government interests, as opposed to third party interests, when implicated, do not overcome the section 552.302 presumption of openness. *See Open Records Decision No. 592 (1991)*. Accordingly, we conclude that the requested information is now public. Thus, the city must release the requested information to the requestor.²

¹A governmental body's duty to request a ruling from this office arises only after it receives a written request for information. Gov't Code § 552.301; *see Open Records Decision No. 304 (1982)*.

²We note that you indicate that the requestor is Mr. Wesley Wynn with the Classification and Compensation Office of Texas A & M University (TAMU). TAMU is a governmental body under the Act. Gov't Code § 552.003(1)(A)(i). If a requestor seeks information in his official capacity as a government employee, he may gain access to another governmental body's records without implicating the Act's prohibition against selective disclosure. *See Attorney General Opinion JM-119 at 2 (1983)*. Additionally, a governmental body may ordinarily transfer information to another governmental body subject to the Act without violating the confidentiality of the information or waiving exceptions to disclosure. *See Open Records Decision No. 661 at 3 (1991)*.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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 cursive script, appearing to read "Kay Hastings".

Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/seg

Ref: ID# 142975

Encl. Submitted document

cc: Mr. Wesley Wynn
Classification and Compensation Office
Texas A&M University
1745 TAMU
College Station, Texas 77843-9988
(w/o enclosure)