



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 27, 2007

Ms. Charlotte A. Towe  
Assistant General Counsel  
TDCJ - Office of the General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2007-17028

Dear Ms. Towe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 298041.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the hiring process for a "Clerk II - non typing" position. You claim that the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must address the department's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body seeking to withhold requested information must submit to this office a copy of the written request for information within fifteen business days of its receipt. Gov't Code § 552.301(e)(1)(B). The department states it received the request for information on October 8, 2007. However, the department did not submit a copy of the written request for information until November 16, 2007. We therefore find that the department failed to comply with the requirements of section 552.301(e). *See id.*

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body

demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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 section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.122 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, because you have failed to comply with the requirements of section 552.301, the department has waived its claim under section 552.122. As you raise no other exception to disclosure of this information, it must be released 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

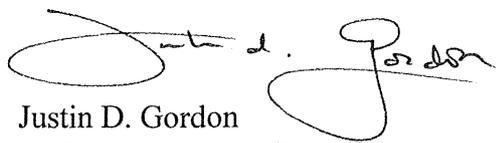
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Office of the Attorney General 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 black ink, appearing to read "Justin D. Gordon". The signature is fluid and cursive, with a large loop at the end of the last name.

Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/jh

Ref: ID# 298041

Enc. Submitted documents

c: Ms. Cathy Schumacher  
13000 Hymeadow, #310  
Austin, Texas 78729  
(w/o enclosures)