



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 20, 2010

Mr. Thomas D. McClure  
Assistant General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2010-14202

Dear Mr. McClure:

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# 395308 (DSHS file 17710-2010).

The Texas Department of State Health Services (the "department") received a request for information related to interviewer notes, final selection paperwork, employer references, and notes taken pertaining to a specified job posting.<sup>1</sup> You state that most of the requested information has been or will be released. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request a copy of the written request for information. *See* Gov't Code § 552.301(e). The department requested a ruling from this office on July 27, 2010. However, as of the date of this letter, you have not submitted to this office a copy of the written request for information. Thus, we find the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and

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<sup>1</sup>As you did not submit a copy of the request, we take our description from your brief.

must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

You seek to withhold the submitted information under section 552.122 of the Government Code. However, section 552.122 is a discretionary exception under the Act and does not demonstrate a compelling reason to withhold information from the public. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, your claim under section 552.122 of the Government Code does not provide a compelling reason for non-disclosure, and none of the submitted information may be withheld on that basis.

You also raise section 552.101 of the Government Code, which ordinarily can provide a compelling reason to withhold information. In this instance, however, you have submitted no arguments in support of the applicability of this exception. *See* Gov't Code § 552.301(e)(1)(A). As you have provided this office with no basis for finding information confidential under this exception, the submitted information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 395308

Enc. Submitted documents

c: Requestor  
(w/o enclosures)