



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2012

Ms. Lona Chastain
Open Records Coordinator
Assistant General Counsel
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2012-00429

Dear Ms. Chastain:

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# 442095 (TWC Tracking No. 111018-036).

The Texas Workforce Commission (the "commission") received a request for the "JVN, applicant list, exercises, and interview results" for a job vacancy announcement number for which a named individual was selected in March or April of 2011. You claim that the requested information is excepted from disclosure under sections 552.101–552.1425 of the Government Code. We have considered the exceptions you claim.

Initially, we must address the commission's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You have not provided any written explanation as to why any of the claimed exceptions apply and have not submitted a copy of the specific information requested or representative samples. We therefore conclude that the commission failed to comply with section 552.301 in requesting this ruling.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. 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 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, 381-82 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Because the commission has failed to comply with the requirements of the Act, the commission has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the commission also raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information confidential by law. Thus, we have no choice but to order the requested information released to the requestor pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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, 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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 442095

No enclosures

c: Requestor