



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 26, 1995

Mr. Riley J. Simpson  
City Attorney  
City of Copperas Cove  
P.O. Box 111  
Copperas Cove, Texas 76522

OR95-498

Dear Mr. Simpson:

On April 14, 1995, we received your request for an open records decision pursuant to the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33023. You contend that the requested information, a city employee's resume, is excepted from required public disclosure under section 552.102(a).

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within 10 days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *But see, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request.

On April 26, 1995, we asked you for copies of the information at issue. To date we have not received your reply.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Without the information requested from you, this office is unable to evaluate the exception you raised under section 552.021(a). Consequently, we find that you have not met your burden under sections 552.301-.303 of the Government Code and that the information is presumed to be public.

As noted above, the presumption of openness can be overcome only upon a compelling demonstration that the information at issue should not be released. By raising section 552.102(a) of the Government Code, you contend that the requested information implicates a city employee's privacy interests and thus is deemed confidential under common law. Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . . ." Section 552.102 is designed to protect public employees' personal privacy. The scope of section 552.102 protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 552.102 protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

In Open Records Decision No. 455 (1987), this office concluded that each of the following categories of information have a direct bearing on an applicant's suitability for public employment and thus are *not* protected by either common-law or constitutional privacy: applicants' educational training; names and addresses of former employers; dates of employment; kind of work performed, salary, and reasons for leaving; names, occupations, addresses, and phone numbers of character references; job performances or abilities; birth dates, height and weight, and marital status. Although you have refused to submit to this office a copy of the record at issue, we further note that individuals seeking employment generally do not include in their resumes information that is "highly intimate or embarrassing." Because you have raised no other exception to disclosure that protects this record, we conclude that the city must release the requested resume in its entirety.<sup>1</sup>

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<sup>1</sup>We note, however, that if the employee whose resume has been requested has elected to make his home address and telephone number confidential in accordance with section 552.024 of the Government Code, the city must withhold this information pursuant to section 552.117(1)(A).

If you have any questions regarding this matter, please contact this office.

Yours very truly,

A handwritten signature in black ink that reads "Loretta R. DeHay". The signature is written in a cursive style with a large initial "L" and a long, sweeping tail on the "y".

Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/RWP/rho

Ref.: ID# 33023

cc: Mr. Roy D. Lehmann  
Lehmann Heritage Corporation  
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