



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 12, 1998

Ms. Jennifer D. Soldano  
Associate General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Bldg.  
125 E. 11th Street  
Austin, Texas 78701-2483

OR98-0435

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 112530.

The Department of Transportation (the "department") received a request for an "interview packet" pertaining to a specified job posting. In response to the request, you submitted to this office for review a representative sample of the information which you assert is responsive.<sup>1</sup> You state that you have "provided [the requestor] with all of the information included in the packet except for the questions and answers to the interview questions." You claim that the "interview questions and answers" are excepted from disclosure under sections 552.104 and 552.122 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. According to your brief, the department received the written request for information "approximately" on November 3, 1997. You did not request a decision from this office until November 19, 1997, more than ten *business* days after the requestor's written request.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Therefore, we conclude that the department failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982); Gov't Code § 552.302. The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. Upon review of your arguments and claimed exceptions against disclosure of the information, we conclude you have not shown a compelling interest for overcoming the presumption that the requested information is public. *See* Open Records Decision No. 473 (1987). Thus, you may not rely upon sections 552.104 and 552.122 to withhold the requested information. The department, therefore, must release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref: ID# 112530

Enclosures: Submitted documents

cc: Mr. Lee Hamberry  
3001 Kemp Boulevard, No. 1215  
Wichita Falls, Texas 76308  
(w/o enclosures)