



June 24, 1999

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR99-1760

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126738.

The Texas Department of Criminal Justice (the "department") received two requests for information pertaining to a job posting with position number 029072 TR. You assert that the requested information is exempt from disclosure under section 552.122 of the Government Code.

Section 552.301(a) of the Government Code provides in part that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the request.

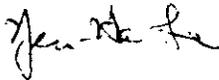
In this case, the department received two requests on February 26, 1999 and March 18, 1999. However, this office did not receive your request for a decision until May 26, 1999, more than the ten-business days mandated by section 552.301(a). Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381; *see* Open Records Decision No. 630 (1994). You have not raised any specific compelling reasons to overcome the presumption that the information is public. Thus, we conclude that the information must be released to the requestor.

You state that the department hopes it is “not obliged to request decisions whenever we receive requests for such documents” that you believe to be excepted by section 552.122 of the Government Code. You further explain that when the department received requests for information relating to the job posting selection process, you have been withholding the information based on the section 552.122 standard set out in Open Records Decision No. 626 (1994) and Open Records Letter No. 94-0652 (1994). You assumed that individual requests for a decision from this office were not required. As you have acknowledged, Open Records Decision No. 626 noted that whether information falls within the section 552.122 exception must be determined on a case-by-case basis. ORD 626 at 6. An attorney general’s opinion must be sought whenever the applicability of a particular exception to *particular information* has not already been determined. Open Records Decision No. 435 (1986). Where only the *standard* to be applied has been addressed, the *applicability* of the standard to particular information must be determined by the attorney general. *Id.*; *cf. Houston Chronicle Publ’g Co. v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989) (attorney general has discretion to determine when previous determination has been made regarding category of information to which request belongs). Therefore, the department was required to seek an opinion on the information the requestor sought and anytime the department receives a request if it is the department’s contention that the information is excepted from disclosure pursuant to one of the act’s exceptions. Gov’t Code § 552.301.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref: ID# 126738

Encl. Submitted documents

cc: Mr. John B. Wyeth  
125 Coral Court  
Panorama, Texas 77304  
(w/o enclosures)