



November 4, 1999

Ms. Martha T. Williams
General Counsel
Port of Houston Authority
P.O. Box 2562
Houston, Texas 77252-2562

OR99-3124

Dear Ms. Williams:

You ask the Open Records Division whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129262.

The Port of Houston Authority (the "Port") received a request for the following information:

- 1) The name, tenure in position, and previous Affirmative Action experience qualifications of the current Port of Houston Affirmative Action Officer/Representative.
- 2) The Affirmative Action Report sheets titled "Distribution of Permanent PHA Work Force by Job Category*" for the years 1992-1998[.]
- 3) A comparison of "average of salaries" between the different categories* (White males, Black males, Hispanic males, etc...) Listed on the affirmative action report sheets titled- "Distribution of Permanent PHA work Force by Job Category*" for the years 1996-1999[.]
*- Categories containing two or more employees
- 4) The results of all salary grade, pay comparisons, job title and race/sex audits conducted during the years of 1990-1999[.]

You assert the requested information in Items 1, 3, and 4 is excepted from disclosure under section 552.103 of the Government Code. You do not claim that an exception applies to the records in Item 2. Therefore, we assume that you will release the information requested in Item 2 to the requestor. We have considered the exception you claim and reviewed the submitted information.

Except for the pay comparisons in Item 4, Items 1 and 4 of this request were at issue in Open Records Letter No. 99-1980 (1999), which held that the Port may withhold the information under section 552.103. However, some of the information responsive to Items 1 and 4 is now subject to disclosure notwithstanding your section 552.103 assertion. The 76th Legislature amended section 552.022, which reads in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) completed report, audit, evaluation, or investigation made of, for, or by a governmental body;

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

...

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures; [and]

(9) a rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations[.]

Act of May 25, 1999, 76th Leg., R.S., ch. 1319, §5, 1999 Tex. Sess. Law Serv. 4500 (Vernon) (to be codified as an amendment to Gov't Code §552.022). Therefore, if any of the subsections of section 552.022 describe the requested information in Item 1 and Item 4, then it is public information and it is not excepted from public disclosure. It must be released. For example, the information requested in Item 1 is public information under section 552.022(2) and any completed audits requested in Item 4 are public information under section 552.022(1). If none of the requested information falls within section 552.022, you may withhold it in accordance with Open Records Letter No.99-1980.

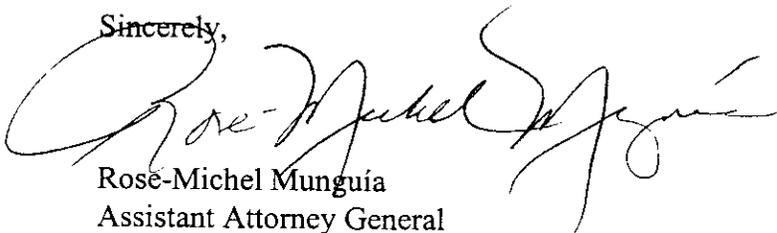
Lastly, we address the request for information responsive to Item 3 and the pay comparisons requested in Item 4. You state that the information responsive to those newly requested items does not exist. The Public Information Act does not require a governmental body to produce information that does not exist. Open Records Decision No. 605 (1992). To the extent the information exists, you did not provide this office with copies or representative samples of information requested in Item 3 or the pay comparisons requested in Item 4 pursuant to section 552.301(e)(D). Pursuant to section 552.301(e), a governmental body is

pursuant to section 552.301(e)(D). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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. Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 20, 1999 Tex. Sess. Law Serv. 4500, 4508 (Vernon) (to be codified as an amendment to Gov't Code § 552.301(e)).

Under section 552.302, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 21, 1999 Tex. Sess. Law Serv. 4500, 4509 (Vernon) (to be codified as an amendment to Gov't Code § 552.302). 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 Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make a compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown such a compelling interest to overcome the presumption that the information at issue is public. Accordingly, you must release the requested information responsive to Item 3 and the pay comparisons requested in Item 4.

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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Rosé-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref: 129262

cc: Mr. I. Scott Green
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Houston, Texas 77048