



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2006

Ms. Bonnie Mayes
City Secretary
City of Brackettville
P. O. Box 526
Brackettville, Texas 78832

OR2006-03138

Dear Ms. Mayes:

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# 245495.

The City of Brackettville (the "city") received a request for several categories of information including the approved budget for the city, the bond issuance agreement for the sewer plant, specific financial and bank statements, minutes of specific meetings, personnel policies and procedures, several job descriptions, and a specific job application and resume. You state that you do not have a portion of the requested information.¹ You also state that you have released most of the requested information. We understand you to claim, however, that the submitted application and resume are excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.³

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the city. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²We presume that you have released any other responsive information, to the extent it exists. If you have not released any such records, you must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

³We note that you have submitted information to this office that is not responsive to the request and that appears to have been submitted for informational purposes only. We do not address in this ruling the applicability of the Act to this information.

Initially, we note that the city has redacted some information on the job application. Here, the requestor excluded from her request any social security numbers, home addresses, and home telephone numbers. Thus, if the redacted information consists of social security numbers, home addresses, and home telephone numbers, it need not be released. If you have redacted more than those categories of information, then that information must be released. *See Gov't Code §§ 552.301, .302.*

Next, we must address the city's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code § 552.301(b).* Additionally, under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure 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 id.* § 552.301(e). You state that the city received the request on October 24, 2005. Accordingly, you were required to request a decision from us by November 7, 2005. However, you did not request a ruling from this office until January 23, 2006. Further, you did not submit the information required under section 552.301(e) by the fifteen day deadline. Consequently, we find that the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will address your arguments concerning this exception.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Here we understand

you to claim that the submitted job application and resume contain private information. You also claim that this type of information has been kept confidential by previous mayors and city council members, and thus, it should be kept confidential now. However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Id.* at 677. Moreover, a governmental body cannot, through contract or policy, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987). Thus, unless the information at issue falls within an exception to disclosure, it must be released. In this instance, we note, that although you claim that the information at issue contains private information, the public has a legitimate interest in the qualifications of government employees. Thus, as the information in the submitted job application and resume highlight the qualifications of a government employee, they are not protected by common-law privacy. *See* Open Records Decision No. 542 at 5 (1990) (information in public employee's resume not protected by constitutional or common-law privacy under statutory predecessor to section 552.101), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Accordingly, neither the application nor the resume are confidential under section 552.101 of the Government Code in conjunction with common-law privacy and may not be withheld on that basis. As you do not raise any other exceptions against disclosure you must release the submitted application and resume to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

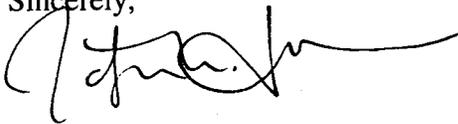
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 245495

Enc. Submitted documents

c: Ms. Beverly B. Garcia
P. O. Box 2003
Brackettville, Texas 78832
(w/o enclosures)