



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 21, 2007

Ms. Sylvia F. Hardman  
General Counsel  
Texas Department of Assistive and Rehabilitative Services  
4800 North Lamar, Suite 300  
Austin, Texas 78756

OR2007-03103

Dear Ms. Hardman:

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# 273885.

The Texas Department of Assistive and Rehabilitative Services (the "department") received a request for information related to the requestor's application for Vocational Rehab Counselor Trainee Job Posting # 40875. You state that you have released some of the responsive information to the requestor. You claim that the submitted interpretive guides are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). The request for information indicates that it was received by the department on December 22, 2006. Accordingly, the department was

required to provide the information required by section 552.301(e) by January 24, 2007.<sup>1</sup> However, the department did not submit the responsive documents until January 25, 2007. Accordingly, we conclude that the department has failed to comply with section 552.301 in this instance.

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); Open Records Decision No. 319 (1982). Section 552.122 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, because you have failed to comply with the procedural requirements of section 552.301, the department has waived its claim under section 552.122. Accordingly, because you do not raise any other exceptions to disclosure, the submitted information must be released 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,

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<sup>1</sup>We note that this calculation includes all holidays, weather closures, and other closure dates provided by the department during this time period.

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,

A handwritten signature in black ink, appearing to read "Justin D. Gordon". The signature is fluid and cursive, with a large loop at the end.

Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/sdk

Ref: ID# 273885

Enc. Submitted documents

c: Ms. Sheryl Mahon  
4109 Randel Drive  
Wichita Falls, Texas 76308  
(w/o enclosures)