



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2013

Mr. John R. Adamo
Director
Administrative Legal Services
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2013-03705

Dear Mr. Adamo:

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# 480420 (ORR No. 2012-0371).

The Texas Department of Family and Protective Services (the "department") received a request for certain applicant information pertaining to specified job postings. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim.

We must address the department's obligations under the Act. Section 552.301 of the Government Code 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 that receives a request for information it wishes to withhold under an exception to disclosure is required to submit to this office within fifteen business days of receiving the request (1) 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. Gov't Code § 552.301(e). The department received the request for information on December 17, 2012. Thus, the department was required to submit the information required by section 552.301(e) by January 11, 2013. As of the date of this

letter, you have not submitted a copy or representative sample of the specific information requested. Consequently, we find the department failed to comply with the requirements of section 552.301(e).

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 information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (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. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. ORD 630. You assert the requested information is excepted from disclosure under section 552.103 of the Government Code. Because the department has failed to comply with the requirements of section 552.301, the department has waived its claim under section 552.103. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475–76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, we have no choice but to order the requested information released pursuant to section 552.302.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 480420

Enc. Submitted documents

c: Requestor
(w/o enclosures)