



July 20, 2000

Mr. John B. Dahill  
Advisory Chief  
County of Dallas  
411 Elm Street  
Dallas, Texas 75202

OR2000-2749

Dear Mr. Dahill:

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# 137250.

The County Auditor of Dallas County (the "county") received a request for (1) "[a]ll Dallas County audits or financial reviews of the South Dallas Health Clinic, 1906 Peabody, Dallas, Texas, and/or the Dallas Health Access, and/or the Margaret K. Wright Clinic" and (2) "[a]ll written public records requests to Dallas County or any of its departments for the [referenced] information[.]" You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.

In requesting this letter ruling, you have not submitted the requested information, or representative samples of that information, to this office. Accordingly, we must consider whether the requested information must be released because of your failure to comply fully with section 552.301 of the Government Code. Section 552.301 provides, in relevant part, that a governmental body that seeks to withhold requested information from the public "must . . . not later than the 15<sup>th</sup> business day after the date of receiving the written request . . . submit to the attorney general . . . a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]" Gov't Code § 552.301(e)(1)(D). Section 552.302 provides as follows:

If a governmental body does not request an attorney general decision *as provided by Section 552.301* and provide the requestor with the information required by Section 552.301(d), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

Gov't Code § 552.302 (emphasis added). The 15-day period in which the county was required to submit the requested information, or representative samples of the information, has expired. Because the county failed timely to submit to this office the requested information, or representative samples, as required by section 552.301(e)(1)(D), the information requested in writing must be released unless there is a compelling reason to withhold that information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App. – Austin 1990, no writ); Open Records Decision No. 630 at 3 (1994). The need of a law enforcement agency, other than the one that has failed to seek a ruling in compliance with section 552.301, to prevent disclosure of requested information can provide a compelling reason sufficient to overcome the presumption of openness that results from non-compliance with section 552.301. *See Open Records Decision Nos. 630 at 3 (1994), 586 at 3 (1991).*

You inform this office that responsive records in the possession of the county auditor have been subpoenaed by a federal grand jury. You also advise us that “[t]he Auditor has been informed by the Federal Bureau of Investigation that the investigation is continuing, and that release of any of the requested information will interfere with that investigation.” You further inform us that the requested information is voluminous.<sup>1</sup> Citing the FBI’s position and the quantity of documents involved, you question the necessity of submitting representative samples of the requested information, advising us that you are willing to do so if this office deems it necessary. This office is under no obligation to notify you as to whether it is necessary to submit the information that you have sought to withhold in requesting a decision under section 552.301 of the Government Code. Neither the pendency of the related federal criminal investigation and the grand jury subpoena nor the quantity of the responsive information excuses the county’s failure to comply fully and timely with section 552.301(e) in seeking to withhold requested information from the public. Section 552.301(e)(1)(D) clearly requires the submission to this office of either the requested information or representative samples of that information.<sup>2</sup> *See also Gov’t Code § 552.006.* In the absence of the responsive information, we are unable to determine whether the ongoing federal investigation constitutes a compelling reason sufficient to overcome the

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<sup>1</sup>You do not explain how the second part of the information request, which seeks the disclosure of related public information requests, is affected by either the federal investigation or the voluminous nature of the auditor’s records.

<sup>2</sup>We note that we specifically notified you of this requirement in our written acknowledgment, dated June 6, 2000, of your request for this ruling.

presumption of openness that results from the county's failure to comply with section 552.301.<sup>3</sup> We therefore conclude that the requested information is not excepted from public disclosure and must be released. We caution the county, however, that chapter 552 of the Government Code makes the release of confidential information a criminal offense. *See* Gov't Code §§ 552.007(a), 552.101, 552.352.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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).

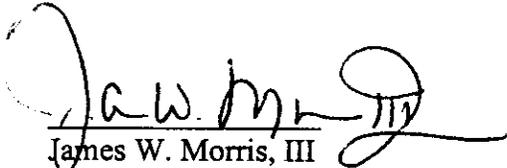
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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<sup>3</sup>In Open Records Decision No. 340 (1982), which you cite as holding that records subpoenaed by a federal grand jury were excepted from disclosure under the statutory predecessor to section 552.108, there was no failure to comply with the statutory predecessor to section 552.301.

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 "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/nc

Ref: ID# 137250

cc: Mr. Todd Bensman  
Staff Writer  
The Dallas Morning News  
P.O. Box 655237  
Dallas, Texas 75265