



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 6, 2004

Ms. Claudia G. Arrieta  
Thornton, Summers, Biechlin Dunham & Brown, L.C.  
10100 Reunion Place, Suite 300  
San Antonio, Texas 78216-4186

OR2004-2760

Dear Ms. Arrieta:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199842.

The Frio County Judge and the Frio County Commissioners Court (the "county"), which you represent, received a request for 20 types of information relating to (1) representation of the county by your law firm in connection with requests for public information; (2) requests for information received by the county and the Frio County Sheriff's Department during a specified time interval; (3) proceedings of the commissioners court involving certain requests for information made by the requestor; (4) payments made to your law firm in connection with the county's responses to those requests; (5) bids received from other attorneys or law firms to represent the county in connection with requests for public information; (6) cases in which your law firm has represented the county during a specified time interval; and (7) judgments and settlements involving claims or lawsuits against the county. You claim that information encompassed by parts 8, 11, 14, and 17 of the request is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.109, 552.110, and 552.111 of the Government Code. We assume that the county has released any other information that is responsive to this request, to the extent that such information existed when the county received the request. If not, then the county must release any such information at this time. *See Gov't Code §§ 552.006, .221, .301, .302; Open Records Decision No. 664 (2000).* We note that the Public Information Act, chapter 552 of the Government Code, does not require the county to release information that did not exist when it received this request or to create responsive information.<sup>1</sup>

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<sup>1</sup>*See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, 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. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

As of the date of this decision, this office has not received any of the information, or a representative sample of any information, that the county seeks to withhold. Thus, the county has not complied with section 552.301 in requesting this decision. Therefore, the information that the county seeks to withhold is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information. The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 552.103, 552.107, and 552.111 of the Government Code are discretionary exceptions to disclosure that the county may waive. *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 Gov't Code § 552.103); Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under Gov't Code § 552.111 may be waived), 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 may be waived), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 may be waived). In failing to comply with section 552.301, the county has waived sections 552.103, 552.107, and 552.111. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). The county also raises sections 552.101, 552.109, and 552.110 of the Government Code. The applicability of these sections can provide a compelling reason for non-disclosure under section 552.302. However, you have not submitted any of the information that you claim is confidential, private, or proprietary, and thus we have no basis for concluding that there is any compelling reason to withhold any such information under sections 552.101, 552.109, or 552.110.

Therefore, we have no choice but to order you to release any such information. If you believe that any such information is confidential, private, or proprietary and may not lawfully be released, you must challenge this ruling in court as outlined below.

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).

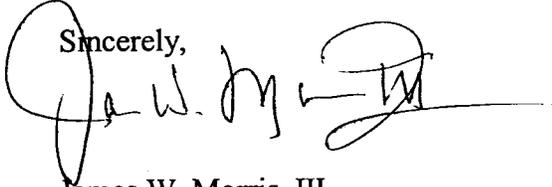
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

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

JWM/sdk

Ref: ID# 199842

c: Mr. Robert Herrera Jr.  
8519 Chimneyhill  
San Antonio, Texas 78254