



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2011

Mr. David Daugherty
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2011-02489

Dear Mr. Daugherty:

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# 409333 (C.A. File No. 10GEN2743).

Harris County Public Health and Environmental Services (the "county") received a request for a letter sent home with children from a pre-school. You claim the requested information is excepted from disclosure under sections 552.101 through 552.151 of the Government Code.¹

Section 552.301 of the Government Code prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires the governmental body to submit to this office, no later than the fifteenth business day after the

¹We note you also raise sections 552.026 and 552.305 of the Government Code, which are not exceptions to disclosure under subchapter C of the Act. Section 552.026 incorporates the federal Family Educational Rights and Privacy Act of 1974, section 1232g of title 20 of the United States Code, into the Act. *See* Gov't Code § 552.026. Section 552.305 permits a governmental body to decline to release information for the purpose of allowing a private party to demonstrate why the information should be withheld or released. *See id.* § 552.305(a)-(b).

governmental body's claimed exceptions to disclosure; (2) a copy of the written request for information; and (3) the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(B), (D). You state the county received the instant request for information on November 23, 2010. As of the date of this decision, you have not submitted to this office any written comments in support of the exceptions the county claims, a copy of the request for information, or any information the county seeks to withhold.² Thus, the county has not complied with section 552.301 of the Government Code in requesting this decision.

If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 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, 381-82 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when 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). The discretionary exceptions to disclosure the county claims are not compelling reasons for non-disclosure under section 552.302. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with section 552.301, the county has waived its discretionary exceptions and may not withhold any of the requested information under any of those exceptions. *See* Open Records Decision No. 663 at 5 (1999) (waiver of discretionary exceptions). The county also claims mandatory exceptions to disclosure. *See* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions generally). But because the county has not submitted any of the requested information to this office, we have no basis to conclude any of the information is confidential under any mandatory exception. Thus, we have no choice but to order you to release the requested information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

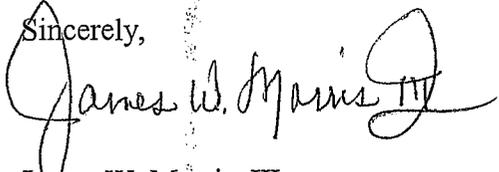
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²Our description of the request is based on other information the county provided in requesting this decision.

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 that reads "James W. Morris, III". The signature is written in a cursive style with a large, looped initial "J".

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

JWM/em

Ref: ID# 409333

c: Requestor