



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2011

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-16794

Dear Ms. Evans:

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# 436503 (GC No. 18940).

The City of Houston (the "city") received a request for e-mails and text messages to or from a named individual during a specified time period referencing a named city council member. You claim the requested information is excepted from disclosure under sections 552.101 through 552.151 of the Government Code.

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 date of its receipt of the request for information, written comments in support of the governmental body's claimed exceptions to disclosure and the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A), (D). You state the city received the present request for information on August 31, 2011. As of the date of this decision, you have not submitted to this office either any written comments in support of the exceptions you claim or any information you seek to withhold. Thus, you have not complied with section 552.301 of the Government Code in requesting this decision.

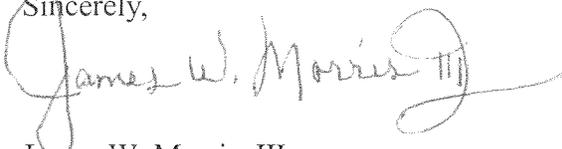
If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v.*

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 you claim 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, you have waived your 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). You also claim mandatory exceptions to disclosure. See Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions generally). But because you have 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 the city 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 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,



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

JWM/em

Ref: ID# 436503

c: Requestor