



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2012

Ms. Susan Gomez
Communications Manager
Wise County Sheriff's Department
200 Rook Ramsey Drive
Decatur, Texas 76234

OR2012-00150

Dear Ms. Gomez:

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# 441819.

The Wise County Sheriff's Department (the "department") received requests from three requestors for information related to a fatal accident. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

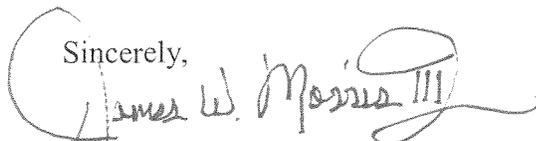
We note the department did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure no later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that 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 (Tex. App.—Austin 1990, no writ).

You inform us the department received the first request for the submitted information on October 13, 2011; therefore, the department's ten-business-day deadline to request this decision was October 27. The department requested this decision by United States mail meter-marked October 28. *See* Gov't Code § 552.308 (prescribing requirements for proof of compliance with Gov't Code § 552.301). Thus, the department did not comply with section 552.301(b), and the submitted information is presumed to be public under section 552.302. 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). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 at 1-2 (1991) (statutory predecessor to Gov't Code § 552.108 may be waived), 177 at 3 (1977) (same). The department's claim under section 552.108 is not a compelling reason to withhold the submitted information. *See* Gov't Code § 552.302; ORD 586. Thus, in failing to comply with section 552.301(b), the department has waived section 552.108 with respect to all three of the requests for the submitted information. *See* Gov't Code § 552.007; Open Records Decision No. 400 at 2 (1983). Therefore, the department may not withhold any of the submitted information from any of the requestors under section 552.108 of the Government Code. Instead, as the department claims no other exception to disclosure, the submitted information must be released.

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

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

JWM/em

Ref: ID# 441819

Enc: Submitted documents

c: Requestors
(w/o enclosures)