



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 8, 2012

Ms. L. Renee Lowe  
Assistant County Attorney  
County of Harris  
2525 Holly Hall, Suite 190  
Houston, Texas 77054

OR2012-01976

Dear Ms. Lowe:

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# 445603 (C.A. File No. 11HSP1239).

The Harris County Hospital District (the “district”) received a request for information related to an incident involving a named individual. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the information you submitted.

We note the district did not comply with its deadlines under 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 not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to this office, 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 at issue; (2) a copy of the request for information; (3) a signed statement of the date of the governmental body’s receipt of the request or evidence sufficient to establish the date of receipt; and (4) the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 of the Government Code provides that if a

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<sup>1</sup>Although you also raise section 552.111 of the Government Code, you have submitted no arguments in support of your assertion of that exception. Accordingly, this decision does not address section 552.111. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must submit written comments stating why claimed exceptions would allow information at issue to be withheld).

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 (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 district received the present request for information on November 15, 2011; therefore, the district's deadlines under subsections 552.301(b) and 552.301(e) were December 1 and December 8, respectively. The district requested this decision by United States mail meter-marked December 9. *See Gov't Code* § 552.308 (prescribing requirements for proof of compliance with Gov't Code § 552.301). Thus, the district did not comply with section 552.301 in requesting the decision, and the submitted information is therefore 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 552.103 of the Government Code, which the district claims, is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *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. 665 at 2 n.5 (2000)* (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). The district's claim under section 552.103 does not constitute a compelling reason for non-disclosure under section 552.302. In failing to comply with section 552.301 of the Government Code, the district has waived section 552.103. Therefore, the district may not withhold the submitted information under section 552.103 of the Government Code. As the district claims no other exception to disclosure, the submitted information must be released to the requestor.<sup>2</sup>

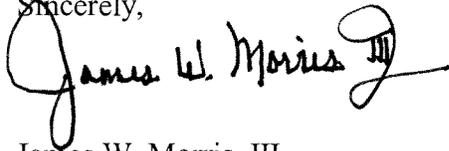
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<sup>2</sup>We note the submitted records contain information pertaining to the requestor's client that the district would ordinarily be required to withhold under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, however, the requestor has a right of access to his client's private information under section 552.023 of the Government Code. *See Gov't Code* § 552.023(a); *Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning himself). Should the district receive another request for these same records from a person who would not have a right of access to the client's private information, the district should resubmit these records and request another decision. *See Gov't Code* §§ 552.301(a), .302. We also note the submitted records contain the requestor's client's driver's license or personal identification number, which the district would ordinarily be required to withhold under section 552.130 of the Government Code. Because section 552.130 protects privacy, the requestor also has a right of access under section 552.023 to his client's driver's license or personal identification number. We further note that the Texas Legislature amended section 552.130 effective September 1, 2011, to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3), including driver's license and personal identification numbers, without the necessity of seeking a decision from the attorney general. *See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22* (to be codified as Gov't Code § 552.130(c)). Thus, should the district receive another request for these same records from a person who would not have a right of access to the requestor's client's private information, section 552.130(c) authorizes the district to redact the client's driver's license or personal identification number. If the district does so, it must notify the requestor in accordance with section 552.130(e). *See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22* (to be codified as Gov't Code § 552.130(d), (e)).

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](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 initial "J" and a long horizontal stroke at the end.

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

JWM/em

Ref: ID# 445603

Enc: Submitted documents

c: Requestor  
(w/o enclosures)