



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2012

Mr. Jason Day
City Attorney
City of Royse City
P.O. Box 638
Royse City, Texas 75189

OR2012-10662

Dear Mr. Day:

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# 460096 (# RCCA12-0107).

The City of Royse City (the "city") received a request for (1) information in a named consultant's possession related to an appraisal, including documents provided by the city, the consultant's interview and research notes, and any other documents he relied on for the appraisal and (2) city council meeting minutes related to three specified topics. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim.

We first note you have not submitted any information responsive to the request. You state the information the city seeks to withhold is "primarily in the possession of a private consultant hired by the [c]ity." You inform us "the [c]ity does not have possession of such documents at this time but is seeking access." We note the Act is applicable to "public information," as defined by section 552.002(a) of the Government Code, which provides that "public information" consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, the Act is generally applicable to information in a governmental body's physical possession that relates to the transaction of the governmental body's official business. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Additionally, the Act encompasses information a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body in connection with the transaction of its official business, and the governmental body owns the information or has a right of access to it. *Id.* § 552.002(a)(2). Thus, where a third party has collected, assembled, or maintains information on behalf of a governmental body, and the governmental body has a right of access to it, the information is subject to the Act, even though it is not in the governmental body's custody. *See* Open Records Decision No. 462 at 4 (1987); *compare* Open Records Decision No. 558 at 3 (1990) (county was not required to seek driving records county's insurer obtained for its own internal purposes).

In this instance, we understand the requested information is related to the transaction of official city business. Therefore, to the extent the information in question is maintained by the city, or is maintained for the city and the city has a right of access to it, the information falls within the scope of section 552.002(a) and is subject to disclosure under the Act. But to the extent the requested information is not collected, assembled, or maintained by or for the city or the city does not own or have a right of access to the information, the information is not subject to the Act and need not be released to the requestor.

To the extent the city maintains or has access to the requested information, we will address its public availability. 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 a governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request for information, (1) the governmental body's arguments in support of each exception to disclosure it claims and (2) the specific information the governmental body seeks to withhold 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 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).

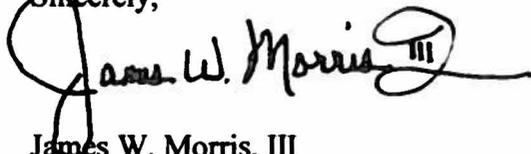
You state the city received the present request for information on May 2, 2012; therefore, the city's fifteen-business-day deadline under section 552.301(e) was May 23. As of the date of this decision, you have not submitted to this office either any arguments in support of your claim under section 552.103 of the Government Code or any information the city seeks to

withhold. Thus, the city has not complied with section 552.301 in requesting this decision, and the requested 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). We note section 552.103 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 city'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 city has waived section 552.103 and may not withhold any of the requested information under that exception. Instead, to the extent the requested information is maintained by the city, or is maintained for the city and the city has a right of access to it, the information must be released pursuant to section 552.302 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,

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 stylized "M".

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

JWM/bhf

Ref: ID# 460096

c: Requestor