ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2012

Ms. Cheryl Elliott Thornton
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002

OR2012-12783

Dear Ms. Thornton:

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# 462352.

The Harris County Attorney's Office (the "county") received a request for letters from the county or the County Commissioner's Court regarding violations of environmental statutes by ExxonMobil in Baytown during a specified time period. You claim the requested information is excepted from disclosure under sections 552.102, 552.108, and 552.111 of the Government Code. We have considered the claimed exceptions.

We must address the county's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(D). You state the county received the request for information on May 29, 2012. Thus, the county's fifteen-business-day deadline under section 552.301(e) was June 19, 2012. However, as of this date of this letter, the county has not submitted a copy or representative samples of the requested information. Thus, the county failed to comply with the procedural requirements mandated by section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body

demonstrates a compelling reason to withhold the information from disclosure. *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); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.108 and 552.111 are discretionary exceptions to disclosure that protect a governmental body's interests. *See* Open Records Decision Nos. 677 at 10 (2002) (section 552.111 is not compelling reason to withhold information under section 552.302), 665 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). Thus, the county's claims under sections 552.108 and 552.111 are not compelling reasons to overcome the presumption of openness. Therefore, the county may not withhold the requested information under section 552.108 or 552.111. Although section 552.102 of the Government Code can provide a compelling reason to overcome this presumption, because you have not submitted the requested information to this office for our review, we have no basis for finding it confidential under that section. Therefore, we have no choice but to order the county to release the requested information concerning ExxonMobil in accordance with section 552.302 of the Government Code. If the county believes the information is confidential and may not lawfully be released, the county 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,

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 462352

Enc. Submitted documents

c: Requestor
(w/o enclosures)