



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2013

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

OR2013-17964

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# 502451 (CAO File No. 13PIA0371).

Harris County (the "county") received a request for e-mails sent to or from the county budget office and a named individual and e-mails sent to or from the county budget office that mention five specified terms during a specified time period.<sup>1</sup> You state the county has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>As you have not submitted a copy of the request for information, we take our description from your brief.

<sup>2</sup>We note that although you raise sections 552.101 and 552.102 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim these sections apply to the submitted information.

We must address the county's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You inform us the county received this request on July 25, 2012. However, as of the date of this letter, you have not submitted a copy of the written request for information. Consequently, we find the county failed to comply with the procedural requirements of section 552.301.

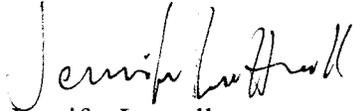
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *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, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. The county claims sections 552.107 and 552.111 of the Government Code for the submitted information. However, these exceptions are discretionary in nature. They serve to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information. *See* Open Records Decision No. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process), 676 at 12 (2002) (attorney-client privilege under section 552.107 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.107 or section 552.111 of the Government Code. As you raise no further exceptions 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Luttrall".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 502451

Enc. Submitted documents

c: Requestor  
(w/o enclosures)