



April 29, 2002

Ms. Marcella V. Henke  
Administrator/CEO  
Jackson County Hospital District  
1013 South Wells Street  
Edna, Texas 77957-4098

OR2002-2205

Dear Ms. Henke:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162045.

The Jackson County Hospital District (the "district") received a request for information relating to meetings of the district's board of directors (item nos. 1 and 2) and bids and proposals received by the board in connection with property known as the Care Inn of Ganado (item no. 3). You state that the district has released the requested information that is responsive to item nos. 1 and 2. You claim that the information that is responsive to item no. 3 is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

We note, however, that the district has failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the tenth business day after the date of receiving the request [for information]." Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

You state that the district received this request for information on February 4, 2002. The district then had ten business days in which to submit a written request for a decision under section 552.301(b). You state that the district requested a decision on February 15, 2002. However, your letter postmarked February 21, 2002 is the only correspondence that this

office has received from the district with respect to its request for this decision. Thus, the district did not submit a request for this decision within the ten business days prescribed by section 552.301(b). Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from public disclosure. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that 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 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived; this exception does not make information confidential or protect third-party interests. *See 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 section 552.103); *Open Records Decision No. 542 at 4 (1990)* (litigation exception does not implicate third-party rights and may be waived). The district waived section 552.103 in failing to comply with section 552.301. The district has not otherwise demonstrated any compelling reason for non-disclosure of the requested information under section 552.302. Therefore, the requested information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

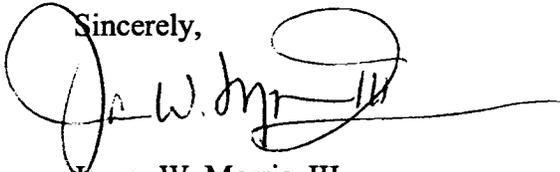
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal flourish extending to the right.

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

JWM/sdk

Ref: ID# 162045

Enc: Submitted documents

c: Ms. Carla J. Cox  
Jackson Walker  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
(w/o enclosures)