



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 3, 2009

Mr. James Downes  
Assistant County Attorney  
Harris County Attorney's Office  
2525 Holly Hall Suite 190  
Houston, Texas 77054

OR2009-17149

Dear Mr. Downes:

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# 363079 (CA File No. 09HSP1335).

The Harris County Purchasing Agent (the "county") received a request for a grant proposal. Although you take no position on the public availability of the requested information, you believe that the information may implicate the interests of Cardinal Health Pharmacy Management ("Cardinal"). You inform us that Cardinal was notified of this request for information and of its right to submit arguments to this office as to why the information should not be released.<sup>1</sup> We have reviewed the submitted information.

We note that the county did not comply with its deadlines under 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. *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)

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<sup>1</sup>*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

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 that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that 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; *City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App.—Amarillo 2007, pet. granted); *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).

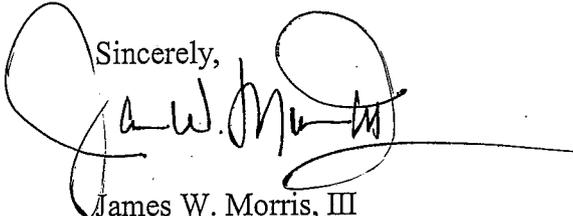
You inform us that the county received the present request for information on September 10, 2009; therefore, the county's deadlines under subsections 552.301(b) and 552.301(e) were September 24 and October 1, respectively. The submitted materials reflect that the county's submissions under subsections 552.301(b) and 552.301(e) were shipped by contract carrier on September 25 and October 2. *See Gov't Code* § 552.308 (stating requirements for submissions to attorney general by common contract carrier). Thus, the county did not comply with section 552.301 in requesting this 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). Therefore, we will consider whether the county must withhold any of the submitted information to protect Cardinal's interests.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the third party should not be released. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Cardinal. Thus, because Cardinal has not demonstrated that any of the submitted information is proprietary for the purposes of the Act, the county may not withhold any of the information on that basis. *See id.* § 552.110(a)-(b); *Open Records Decision* Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, because the county does not claim an exception 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.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, appearing to read 'James W. Morris, III', with a long horizontal line extending to the right.

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

JWM/cc

Ref: ID# 363079

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Terry Copeland  
Cardinal Health Pharmacy Management  
1330 Enclave Parkway  
Houston, Texas 77077  
(w/o enclosures)