



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2010

Mr. Jonathan Petix
Assistant Criminal District Attorney
San Jacinto County Criminal District Attorney's Office
1 State Highway 150, Room 21
Coldspring, Texas 77331

OR2010-09733

Dear Mr. Petix:

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# 385146.

The San Jacinto County Judge, Precinct 3 County Commissioner and County Clerk (collectively the "county") received separate joint requests from two requestors for correspondence with a named individual and other information regarding Sharp Lane and a specified address on Sharp Lane. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim.

We note that the county did not 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. *See* Gov't Code § 552.301(a). Section 552.301(e) provides that a governmental body must submit to this office, not later than the fifteenth business day after the date of its receipt of the request for information, the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(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.*

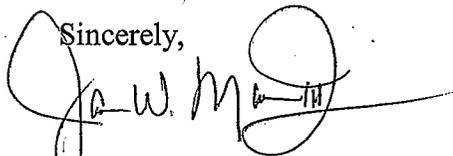
Kuzmich, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You indicate that the county received these requests for information on April 20, 2010; therefore, the county's fifteen-business-day deadline under section 552.301(e) was May 11. As of the date of this decision, the county has not submitted either the information that it seeks to withhold or representative samples of that information. Thus, because the county has failed to comply with section 552.301 of the Government Code in requesting this decision, the requested information is 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). Although the county seeks to withhold the requested information under section 552.103 of the Government Code, that section 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 No. 665 at 2 n.5 (discretionary exceptions generally). In failing to comply with section 552.301 of the Government Code, the county has waived section 552.103 of the Government Code. See Open Records Decision No. 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the county may not withhold any of the requested information under section 552.103. Thus, as the county claims no other exception to disclosure, the requested 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, 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". The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

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

JWM/tp

Ref: ID# 385146

c: 2 Requestors