



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 3, 2011

Ms. Kathleen Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

OR2011-03054

Dear Ms. Decker:

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# 410674 (PIR No. 10.12.10.05).

The Texas Commission on Environmental Quality ("TCEQ") received a request for information relating to complaints filed in Robertson County during a specified time interval. You state TCEQ has released some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the information you submitted. We note the requestor also asks TCEQ to "disclose to the residents in the community of Hammond[] where some 400,000 [chickens] were buried due to a[n] outbreak of a poultry disease[.]" Unless TCEQ has already released any information that would be responsive to that aspect of the request, to the extent such information existed when TCEQ received the request, TCEQ must release any such information immediately.<sup>2</sup> See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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<sup>1</sup>Although you also initially raised sections 552.103, 552.107, and 552.111 of the Government Code, you have not submitted arguments in support of the applicability of those exceptions. Therefore, this ruling does not address sections 552.103, 552.107, or 552.111. See Gov't Code § 552.301(e)(1)(A) (governmental body must submit comments stating why claimed exceptions apply to information at issue).

<sup>2</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We next note TCEQ did not request this decision within the deadlines prescribed by section 552.301 of the Government Code. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine 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) requires the governmental body to submit to the attorney general, 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 at issue; (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 the date of receipt; and (4) the specific information at issue 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; *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 state TCEQ received the instant request for information on December 10, 2010. The documentation you have submitted reflects, however, that the requestor initially mailed his request to TCEQ's Region Nine office ("Region Nine"). The submitted documentation also reflects Region Nine received the request on December 3, 2010. Region Nine asked the requestor to submit his request to TCEQ's public information officer in Austin, where it was received on December 10. We note a request for public information generally need not be addressed to a governmental body's officer for public information to be a valid request under the Act. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974); *see also* Gov't Code § 552.202 (each department head of a governmental body is an agent of its officer for public information for the purposes of receiving requests under the Act). The Act merely requires a request to be reasonably identifiable as a request for public records. *See* ORD 497 at 3. Thus, for purposes of section 552.301, the date of TCEQ's receipt of the instant request for information was December 3, 2010. Therefore, TCEQ's ten-business-day deadline to request this decision under section 552.301(b) was December 17. Depending on whether TCEQ observed December 23, 24, and/or December 27 as Christmas holidays, TCEQ's fifteen-business-day deadline under section 552.301(e) was as early as December 24 and no later than December 29. TCEQ requested this decision on December 27 and submitted its arguments against disclosure and the information at issue on January 3. Thus, TCEQ did not comply with section 552.301, and the information at issue is therefore presumed to be public under section 552.302.

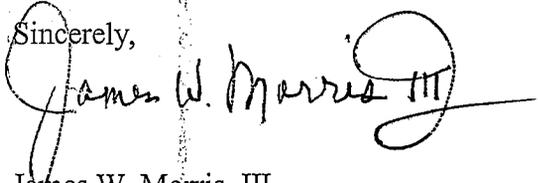
This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, TCEQ claims section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Because the purpose of the

common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person, the informer's privilege, unlike other claims under section 552.101, may be waived. See Open Records Decision No. 549 at 6 (1990). Therefore, TCEQ's assertion of the informer's privilege does not provide a compelling reason for non-disclosure under section 552.302, and TCEQ may not withhold any of the submitted information on that basis. As TCEQ claims no other exception to disclosure, the submitted information must be released to the requestor in its entirety.

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 that reads "James W. Morris III". The signature is written in a cursive style with a large, looping initial "J".

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

JWM/em

Ref: ID# 410674

Enc: Submitted documents

c: Requestor  
(w/o enclosures)