



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 16, 2013

Mr. Scott Campbell  
Town Manager and Public Information Officer  
Town of Sunnyvale  
127 Collins Road  
Sunnyvale, Texas 75182

OR2013-00976

Dear Mr. Campbell:

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# 477300.

The Town of Sunnyvale (the "town") received a request for ten categories of information involving a named individual and/or a named business entity. You claim the requested information is excepted from disclosure under sections 552.101 through 552.147 of the Government Code.

We note section 552.301 of the Government Code 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(e) 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 for information, (1) written comments in support of the governmental body's claimed exceptions to disclosure and (2) the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A), (D). You state the town received the present request for information on October 29, 2012. As of the date of this decision, the town has not submitted to this office either any written comments in support of the exceptions the town claims or any information the town seeks to withhold. Thus, the town has not complied with section 552.301 of the Government Code in requesting this decision.

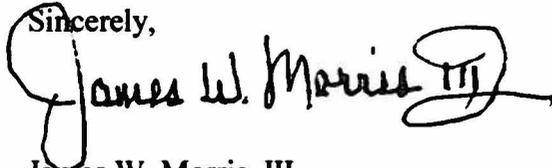
If a governmental body fails to comply with section 552.301, the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold

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, 381-82 (Tex. App.—Austin 1990, no writ). 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). The town's discretionary exceptions to disclosure are not compelling reasons for non-disclosure under section 552.302. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with section 552.301, the town waived the discretionary exceptions it claims and may not withhold any of the requested information under any of those exceptions. *See* Open Records Decision No. 663 at 5 (1999) (waiver of discretionary exceptions). The town also claims mandatory exceptions to disclosure. *See* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions generally). But because the town has not submitted any of the requested information to this office, we have no basis to conclude any of the information is confidential under any mandatory exception. Thus, we have no choice but to order the town to release the requested information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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, looped initial "J".

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

JWM/bhf

Ref: ID# 477300

c: Requestor