



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 22, 2012

Ms. Susan Fillion  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress, Fifteenth Floor  
Houston, Texas 77002

OR2012-02716

Dear Ms. Fillion:

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# 447050 (CA File No. 11PIA0559).

The Harris County Constable's Office Precinct 3 (the "constable's office") received a request for the complete personnel file of a named deputy.<sup>1</sup> You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must address the constable's office's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate

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<sup>1</sup>As you have not submitted a copy of the request for information, we take our description from your brief.

which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You state the constable's office received the request for information on December 12, 2011. As of this date, you have not submitted to this office written comments stating the reasons why the claimed exceptions apply, a copy of the written request for information, or a copy or representative sample of the information requested. Accordingly, we conclude the constable's office failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). You assert the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. Sections 552.103 and 552.108 are discretionary exceptions to disclosure 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 Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). In failing to comply with the requirements of section 552.301, the constable's office has waived its claims under sections 552.103 and 552.108. Accordingly, the constable's office may not withhold the requested information under section 552.103 or section 552.108. Although the constable's office also raises section 552.101 of the Government Code, which is a mandatory exception to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the requested information released pursuant to section 552.302. 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, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/eb

Ref: ID# 447050

Enc. Submitted documents

c: Requestor  
(w/o enclosures)