



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 10, 2012

Ms. Cheryl Elliott Thornton  
Assistant County Attorney  
Harris County  
1310 Prairie, Suite 880  
Houston, Texas 77002

OR2012-05083

Dear Ms. Thornton:

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# 450209 (C.A. File No. 12PIA002).

The Harris County Constable, Precinct 5 (the "constable") received a request for a specified incident report involving a named individual at a specified location.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.102, 552.111, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim.

We must address the constable's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated 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 which exceptions apply to which parts of the documents. *See Gov't Code* § 552.301(e). You inform us the constable received this request on January 24, 2012. However, as of the date of this letter, you have not submitted to this office the written request letter for information, comments explaining why the stated exceptions apply, or a copy or representative sample of the information requested. Consequently, we find that the constable failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the

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<sup>1</sup>As you did not submit a copy of the request, we take our description from your brief.

requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You assert the requested information is excepted under sections 552.102, 552.111, 552.117, and 552.1175 of the Government Code. In failing to comply with the procedural requirements of section 552.301, you have waived the discretionary exceptions you raised. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the requested information may not be withheld under any of the discretionary exceptions. Furthermore, by failing to submit any information for our review, we have no basis for finding it confidential under the claimed mandatory exceptions. 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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/dls

Ref: ID# 450209

c: Requestor