



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2012

Ms. Cheryl Thornton
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2012-07578

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# 454233 (C.A. File No. 12PIA0120).

The Harris County Constable, Precinct 1 (the "constable's office") received a request for the complete personnel file of a named former employee, to include any discipline records or internal investigation records.¹ You claim that the requested information is excepted from disclosure under sections 552.117 and 552.1175 of the Government Code. We have considered the exceptions you claim.

Initially, we note that some of the requested information appears to have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2010-04473 (2010). In that ruling, we concluded the marked polygraph information is confidential under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. Pursuant to section 552.101 in conjunction with common-law privacy and the ruling in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), we also ruled the adequate summary of the sexual harassment investigation and statements of the accused must be released, but the identifying information of the alleged victim and witnesses, which we marked, must be withheld along with the remainder of the completed sexual harassment investigation documents subject to section 552.022 Government Code. We ruled that the remaining information may be

¹As you did not submit a copy of the request, we take our description from your letter.
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withheld under section 552.103 of the Government Code on the basis that litigation regarding the matter was reasonably anticipated.

As we have no indication the law, facts, and circumstances have changed with regard to our conclusions under section 552.101 since the issuance of the previous ruling, the constable's office must continue to rely on Open Records Letter No. 2010-04473 as a previous determination and withhold any identical polygraph information under section 552.101 in conjunction with section 1703.306 of the Occupations Code. The constable's office must also continue to rely on Open Records Letter No. 2010-04473 as a previous determination and release the adequate summary of the sexual harassment investigation and statements of the accused, with identifying information of the alleged victim and witnesses withheld, along with the remainder of the completed sexual harassment investigation documents subject to section 552.022, in accordance with section 552.101 and the ruling in *Ellen*. With regard to our conclusions under section 552.103, however, you do not inform us of the status of any litigation with regard to the responsive information, and thus, upon review, we conclude the law, facts and circumstances have changed with regard to our ruling under section 552.103. Accordingly, no information may be withheld under that exception pursuant to Open Records Letter No. 2010-04473. We will next address any remaining information responsive to the present request that was not at issue in the previous ruling, or that was at issue in the previous ruling, but which may not be withheld in accordance therewith.

We must address the constable's office's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. 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's office received the request on March 2, 2012. Accordingly, the constable's office's fifteen-business-day deadline was March 23, 2012. However, as of the date of this letter, you have not submitted for our review the request for information, comments explaining why the stated exceptions apply, or a copy or representative sample of the information requested. Consequently, we find 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 comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party

interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You assert that the requested information is confidential under sections 552.117 and 552.1175 of the Government Code. However, because the constable's office has not submitted the requested information to this office for our review, we have no basis for finding it confidential under section 552.117 or section 552.1175.² Thus, we have no choice but to order you 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, 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/em

Ref: ID# 454233

c: Requestor

²We note, however, that section 552.024 of the Government Code permits a governmental body to withhold information subject to section 552.117 of the Government Code, which pertains to a person who has made a proper election, without seeking a ruling from this office. *See* Gov't Code § 552.024(c)(2). In addition, under subsection 552.1175(f) of the Government Code, a governmental body may withhold information subject to subsection 552.1175(b) without requesting an opinion from this office. *See* Gov't Code § 552.1175(f).