



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 30, 2012

Ms. Becky Wilkins  
Hill County Treasurer's Office  
P.O. Box 671  
Hillsboro, Texas 76645

OR2012-08285

Dear Ms. Wilkins:

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# 454983.

The Hill County Treasurer's Office (the "county") received a request for a list of the county's "leave pool" participants; the dates the participants joined the leave pool; the number of hours the participants donated to the leave pool; and meeting dates, agendas, and minutes of any meetings held during the past two years. You claim that the submitted information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted any meeting dates, agendas, or minutes of any meetings. Thus, to the extent such information existed and was maintained by the county on the date the county received the request for information, we presume the county has released it. If not, the county must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Next, we must address the county's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth

business day after receiving the request. Gov't Code § 552.301(b). You state the county received the request for information on March 9, 2012. As you do not inform this office the county was closed for business any days between March 9, 2012 and March 23, 2012, we find the county's ten-business-day deadline was March 23, 2012. However, the county did not request a ruling from this office until March 26, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Although you indicate the county sought clarification and/or narrowing of the request for information, which you state the requestor declined to do, you do not provide this office with any dates. Consequently, in this instance, we are not able to determine whether the county's ten-business-day period started over. *See generally id.* § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (after requesting clarification within ten-business-day deadline, city timely submitted request for opinion within ten business days after receiving clarification). Therefore, we find the county 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 procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *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); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You raise section 552.102 of the Government Code, which can provide a compelling reason to withhold information. We also note portions of the submitted information may be subject to section 552.117 of the Government Code, which also provides a compelling reason for non-disclosure.<sup>1</sup> Accordingly, we will address the applicability of these exceptions to the submitted information.

You claim the submitted information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.101 of the Government Code. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the Third Court of Appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. *Texas Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court then considered the applicability of section 552.102, and held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Id.* at 347. Having carefully reviewed the submitted information, we find that none of the information is excepted under section 552.102(a) and, therefore, none of it may be withheld on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the county employees whose information we have marked are currently licensed peace officers, the county must withhold this marked information under section 552.117(a)(2) of the Government Code.<sup>2</sup>

If any of the county employees whose information is at issue are not currently licensed peace officers, the marked information may be protected by section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) protects from disclosure the same information as section 552.117(a)(2) for current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former employee only if the individual whose information is at issue made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the employees whose information we have marked timely requested confidentiality pursuant to section 552.024, the marked information must be withheld under section 552.117(a)(1) of the Government Code. The county may not withhold the marked information under

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<sup>2</sup>We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision.

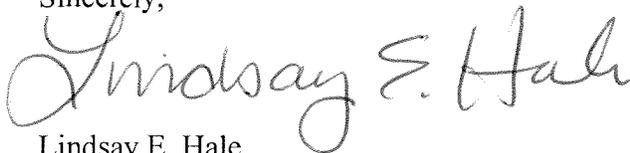
section 552.117 for individuals who did not make a timely election to keep their information confidential.

In summary, the county must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the individuals whose information is at issue are currently licensed peace officers. For any individuals who are not currently licensed peace officers, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code for those individuals who timely requested confidentiality pursuant to section 552.024. The county must release the remaining information.

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 454983

Enc. Submitted documents

c: Requestor  
(w/o enclosures)