



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2012

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

OR2012-09302

Dear Ms. Elliott-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# 456393 (CA File No. 12PIA0163).

The Harris County Constable's Office, Precinct 5 (the "constable's office") received a request for the report related to a specified case. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address your responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You state the constable's office received the request for information on March 23, 2012. This office does not count the day the request was received or holidays, including skeleton crew days observed by a governmental body, as business days for the purpose of calculating a governmental body's deadlines under the Act. We understand the constable's office was closed for business on April 6, 2012. Therefore, your ten-business-day deadline to request a decision from this office was April 9, 2012. Upon review, we find you did not request a ruling from this office until April 10, 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). Thus, we find the constable's office failed to comply with the requirements of section 552.301 of the Government Code in asking this office for a ruling under the Act.

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 the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information sufficient 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) (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 exists when third-party interests are at stake or when information is confidential under the Act or other law. Open Records Decision No. 150 (1977). Section 552.108 of the Government Code is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Gov't Code § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the constable's office may not withhold any of the submitted information under section 552.108 of the Government Code. We note, however, some of the submitted information is subject to section 552.130 of the Government Code, which does make information confidential under the Act.¹ Accordingly, we will address this exception.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, the constable's office must withhold the driver's license numbers we have marked under section 552.130 of the Government Code. As you raise no other exceptions to disclosure, the remaining information must be released.

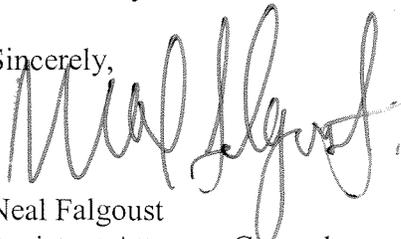
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

¹The 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).

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 'Neal Falgoust', written over a light gray grid background.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 456393

Enc. Submitted documents

c: Requestor
(w/o enclosures)