



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2013

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

OR2013-00502

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# 476792 (C.A. File # 12PIA561).

The Harris County Constable's Office, Precinct 5 (the "constable's office") received a request for training requests sent up the chain of command from any deputies, sergeants, or lieutenants, to captains, chiefs, or the constable, during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the constable's office's obligations 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(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

¹Although you also claim section 552.1175 of the Government Code for the submitted information, we note section 552.117 is the proper exception to raise for information the constable's office holds in an employment capacity.

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. Gov't Code § 552.301(e). The constable's office received the request for information on October 26, 2012. You do not inform us the constable's office was closed for any business days between October 26, 2012, and November 16, 2012. Accordingly, you were required to provide the information required by subsection 552.301(e) by November 16, 2012. A copy of the envelope in which the constable's office originally provided the information at issue bears a postmark of November 16, 2012. However, that original submission was returned to the constable's office for insufficient postage and the constable's office again mailed its request for a ruling to this office in an envelope bearing a postmark of November 26, 2012. Section 552.308 of the Government Code provides when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail "with postage . . . prepaid" and the postmark date is within the required time period. *See id.* § 552.308. Accordingly, we conclude the constable's office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *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* ORD 630. The constable's office claims section 552.103 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.103 of the Government Code. However, as section 552.117 can provide a compelling reason to overcome this presumption, we will address the applicability of section 552.117 to the submitted information.

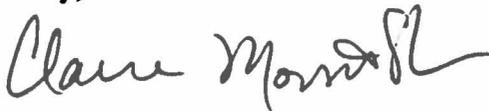
Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Upon review, we find no portion of the submitted

information consists of the home address, telephone number, emergency contact information, social security number, or family member information of a current or former employee of the constable's office. Accordingly none of the submitted information may be withheld under section 552.117(a)(1) of the Government Code. Therefore, the submitted information must be released in its entirety.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 476792

Enc. Submitted documents

c: Requestor
(w/o enclosures)