



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2016

Ms. Sarah Ibrahim
Assistant County Attorney
Harris County Attorney's Office
1019 Congress , 15th Floor
Houston, Texas 77002

OR2016-10761

Dear Ms. Ibrahim:

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# 609722 (C.A. File No. 16PIA0097).

The Harris County Constable's Office, Precinct Seven (the "constable's office") received a request for GPS coordinates and measurements related to a specified automotive accident. 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, you claim the submitted information "may be released only through a subpoena duces tecum in accordance with [s]ection 552.0055 [of the Government Code]." Section 552.0055 of the Government Code provides, "[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under [the Act]." Gov't Code § 552.0055. This section does not apply in all instances in which a governmental body could have received such a subpoena or discovery request. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (stating in interpreting statutes, goal of discerning legislature's intent is served by beginning with statute's plain language because it is assumed legislature tried to say what it meant and its words are, therefore, surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994))

(“In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.”).

You do not assert the request you received is in fact a “subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure.” Gov’t Code § 552.0055. Furthermore, you have not demonstrated, and the request does not indicate, the request for information constitutes a discovery request issued in compliance with a statute or a rule of civil or criminal procedure. Therefore, we find the constable’s office received a request for information under the Act. Consequently, we will consider your claimed exception to disclosure for the information at issue.

Next, we must address the procedural obligations of the constable’s office under the Act. 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 id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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 id.* § 552.301(e). The constable’s office received the request for information on February 17, 2016. You do not inform us the constable’s office was closed for business on any days between February 17, 2016, and March 2, 2016. Accordingly, you were required to provide the information required by section 552.301(b) by March 2, 2016. Moreover, you were required to provide the information required by section 552.301(e) by March 9, 2016. However, the envelopes in which you provided the information required by sections 552.301(b) and 552.301(e) were postmarked March 4, 2016, and March 11, 2016, respectively. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). 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 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 (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 Nos. 319 (1982), 586 (1991), 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. You claim section 552.108 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 Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, no portion of the submitted information may be withheld under section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the constable's office must release the submitted 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bw

Ref: ID# 609722

Enc. Submitted documents