



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2012

Mr. Vince Ryan
County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2012-06088

Dear Mr. Ryan:

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# 452270 (C.A. File No. 12PIA0083).

The Harris County Constable Precinct 4 (the "constable's office") received a request for seven categories of information: (1) the name, sex, ethnicity, salary, title, and dates of employment of each of the constable's office's deputies; (2) any report pertaining to the requestor for a specified time period; (3) any written consent the constable's office provided to allow photographs of personnel to appear on a specified website; (4) any transfer, assignment of copyright, or other writing allowing any photographs that are the property of the constable's office to appear on the specified website; (5) the name of each employee appearing on the specified website; (6) the date each photograph depicting a constable's office employee was taken; and (7) a copy of any copyright or trademark license, certificate, or registration in which the constable's office retains an interest. You state the constable's office does not possess information responsive to items three through seven of the request for information.¹ You claim that the submitted information is excepted from disclosure

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

under sections 552.108 and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor and comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note that the request seeks only the name, sex, ethnicity, salary, title, and dates of employment for each deputy employed by the constable's office. You have submitted the employee identification numbers for each deputy, which are not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the constable's office need not release such information in response to this request.

Next, we must address the constable's office's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301(a). Section 552.301(e-1) of the Government Code requires a governmental body that submits written comments to the attorney general under section 552.301(e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business-days of receiving the request for information. *Id.* § 552.301(e-1). The requestor contends the constable's office did not comply with section 552.301 of the Government Code in requesting this decision because the constable's office did not submit to the requestor a copy of the supporting exhibits cited in the constable's office's brief to our office. We further note, and you acknowledge, the constable's office failed to raise section 552.152 of the Government Code within the ten-business day deadline, as prescribed by section 552.301(b). *See id.* § 552.301(b).

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 demonstrates a compelling reason to withhold the information to overcome this presumption. *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). Regardless of whether the constable's office failed to meet its section 552.301 burden, section 552.152 of the Government Code can provide a compelling reason sufficient

²We note that, although you raise section 552.101 of the Government Code, you make no argument to support this exception. Therefore, we presume you have withdrawn your claim under this exception. *See* Gov't Code §§ 552.301, .302.

to overcome the presumption of openness caused by the failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .352. The constable's office also seeks to withhold the responsive information under section 552.108 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and generally may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). However, the interests under section 552.108 of another governmental body can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform our office, and provide supporting documentation representing, the Spring Independent School District's Police Department (the "department") objects to the release of the submitted information under section 552.108. Accordingly, we will address the constable's office's arguments for the responsive information in Exhibits D and E under section 552.152, as well as consider whether the constable office's may withhold the information at issue on behalf of the department under section 552.108.

Next, as you acknowledge, the responsive information in Exhibit E is subject to section 552.022 of the Government Code. Section 552.022(a)(2) provides the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body are expressly public under section 552.022 and may not be withheld unless made confidential under the Act or other law. Gov't Code § 552.022(a)(2). Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, as previously noted, this section is discretionary and does not make information confidential under the Act. *See id.* § 552.108; Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 3-21, 23-26, 28-37 (providing for "confidentiality" of information under specified exceptions); *see also* ORD Nos. 665 at 2 n.5, 177 at 3. Therefore, the constable's office may not withhold the responsive information in Exhibit E under section 552.108. However, because section 552.152 of the Government Code makes information confidential under the Act, we will address the applicability of this exception to the responsive information in Exhibit E. *See* Gov't Code § 552.152 (providing for "confidentiality" of information under section 552.152). We will also address your argument under section 552.108 for the information in Exhibit D.

The representative of the requestor contends that the constable's office has already made public the requested names, titles, and salaries of some of the deputies. We note section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See id.* § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). You seek to withhold the information at issue in Exhibit E under section 552.152 of the Government Code. However, pursuant to

section 552.007, the constable's office may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential by law. Because section 552.152 makes information confidential, we will address the applicability of this exception to all of the responsive information in Exhibit E. *See* Gov't Code § 552.152.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide supporting documentation from the department representing, the information in Exhibit D pertains to a criminal case that is pending investigation by the department. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based upon these representations and our review, we conclude that release of the information in Exhibit D would interfere with the detection, investigation, or prosecution of crime. Thus, section 552.108(a)(1) is applicable to Exhibit D.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes, among other things, the names of the investigating officers. 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, the constable's office may withhold Exhibit D on behalf of the department under section 552.108(a)(1) of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. Upon review, we find you have failed to demonstrate that release of any of the basic information in Exhibit D or any of the responsive information in Exhibit E would subject any officer to a substantial threat of physical harm. Accordingly, the

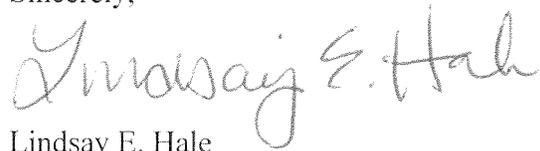
constable's office may not withhold any of the information at issue in Exhibits D or E under section 552.152 of the Government Code.

In summary, with the exception of basic information, which the constable's office must release, the constable's office may withhold Exhibit D on behalf of the department under section 552.108(a)(1) of the Government Code. The constable's office must release the remaining responsive 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, 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# 452270

Enc. Submitted documents

c: Requestor
(w/o enclosures)