



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2013

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

OR2013-11825

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# 493498 (File No. 13PIA0211).

The Harris County Constable, Precinct 5 (the "constable's office") received a request for a specified investigation file. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.111 of the Government Code. 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 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. 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) general 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). You state the constable's office received the request for information on April 26, 2013. Thus, the constable's office's fifteen-business-day deadline was May 17, 2013. However, the envelope in which you submitted the information required by section 552.301(e) bears a meter-mark of May 19, 2013. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the constable's office failed to comply with the requirements of section 552.301(e) 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 information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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); *see also* Open Records Decision No. 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. Although you raise sections 552.107(1), 552.108, and 552.111 of the Government Code for the submitted information, these sections are discretionary in nature. They serve only to protect a governmental body's interests, and may be waived; as such, they do not constitute compelling reasons to withhold information. *See* Open Records Decision Nos. 676 at 11-12 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 6-7 (1987) (statutory predecessor to section 552.111 is discretionary exception), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the constable's office may not withhold any of the submitted information under sections 552.107(1), 552.108, or 552.111 of the Government Code. However, because sections 552.101, 552.107(2), and 552.130 of the Government Code can provide compelling reasons to withhold information, we will address the applicability of these sections to the submitted information.¹

Next, we note the submitted information is subject to section 552.022 of the Government Code, which provides in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information constitutes a completed investigation subject to section 552.022(a)(1). You also seek to withhold the information at issue under section 552.107(2) of the Government Code. Section 552.107(2) allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). However, section 552.022(b) provides that a court may not order a governmental body to withhold from public inspection any category of information described by section (a) unless the category of information is expressly made

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

confidential under the Act or other law. *See id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, we conclude the constable's office may not withhold any of the submitted information under section 552.107(2) of the Government Code. However, because sections 552.101 and 552.130 of the Government Code make information confidential under the Act, we will consider the applicability of these sections to the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. You raise this section in conjunction with the constitutional doctrine embodied in *Garrity v. New Jersey*, 385 U.S. 493 (1967) and *Spevack v. Klein*, 385 U.S. 511 (1967) for the submitted information. Both *Garrity* and *Spevack* dealt with the constitutional prohibition against self-incrimination in court or other judicial proceedings. *See Spevack*, 385 U.S. 511, *Garrity*, 385 U.S. 493. Here, the question is whether the information at issue must be released in response to a request for information under the Act. Information is not confidential under the Act simply because the party that provided the information anticipated or requested that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976); *see also* Attorney General Opinion JM-672 (1987) (governmental body cannot overrule or repeal provisions of Act by agreement or contract). We therefore conclude the constable's office may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of the decisions in *Garrity* or *Spevack*.

Section 552.101 of the Government Code also encompasses constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4. The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). You claim the submitted information is protected by constitutional privacy. Upon review, however, we find you have not demonstrated how any of this information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Accordingly, the constable's office may not withhold any of the submitted information under section 552.101 of the Government in conjunction with constitutional privacy.

Section 552.130(a)(2) of the Government Code excepts from disclosure information related to "a motor vehicle title or registration issued by an agency of this state or another state or country[.]" Gov't Code § 552.130(a)(2). Accordingly, the constable's office must withhold the license plate number we have marked under section 552.130(a)(2) of the Government

Code.² As no further exceptions to disclosure are raised for the remaining information, the constable's office must release it.³

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 493498

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

³We note the requestor has a special right of access to some of the information being released. *See* Gov't Code § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Accordingly, if the constable's office receives another request for this information from a different requestor, then the constable's office must again seek a decision from this office.