



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2015

Ms. Kristen N. Lee
Assistant County Attorney
Harris County
1019 Congress Street, 15th Floor
Houston, Texas 77002

OR2015-15810

Dear Ms. Lee:

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# 574286 (CA File# 15PIA0191).

The Harris County Constable, Precinct 8 (the "constable's office") received a request for a specified report. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the requirements for the constable's office to timely request a ruling from this office. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow when asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the applicable exceptions within ten business days after receiving the request. *See id.* § 552.301(b). The constable's office received the present request on May 12, 2015. We understand the constable's office was closed May 25, 2015, in observance of Memorial Day. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act.

¹Although you do not cite to section 552.152 of the Government Code in your brief, we understand you to raise this exception based on your argument.

Thus, the constable's office's ten-business-day deadline to request a ruling from this office was May 27, 2015. The request for a ruling was postmarked on May 28, 2015. *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 conclude the constable's office failed to comply with the requirements of section 552.301 in asking this office for a ruling.

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 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 other law. Open Records Decision No. 150 (1977). Section 552.108 of the Government Code is discretionary in nature and may be waived. Thus, section 552.108 does not provide a compelling reason to withhold the information at issue. *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). Accordingly, the constable's office may not withhold the submitted information under section 552.108 of the Government Code. Sections 552.101, 552.130, and 552.152 of the Government Code can provide compelling reasons not to disclose information to the public.² Therefore, we will consider the applicability of these sections to the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. Upon review, we find the FBI number we have marked consists of CHRI which the constable's office must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the constable's office must withhold the motor vehicle record information we have marked under section 552.130 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 [required public disclosure] 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.

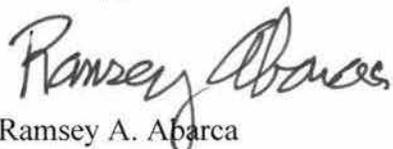
Gov't Code § 552.152. You argue release of the remaining information would compromise the safety of the involved law enforcement officer because he may be called as a witness at trial. However, upon review, we find you have not demonstrated the release of any of the remaining information would subject the officer to a substantial threat of physical harm. Thus, the constable's office may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, the constable's office must withhold the FBI number we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The constable's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining submitted 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.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,

A handwritten signature in black ink that reads "Ramsey Abarca". The signature is written in a cursive style with a large initial "R".

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 574286

Enc. Submitted documents

c: Requestor
(w/o enclosures)