



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2017

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

OR2017-02222

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# 643846 (Fine# 16PIA0656).

The Harris County Human Resources & Risk Management Office (the "county") received a request for information pertaining to a specified automobile accident. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the county's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in 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), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The county received the request for information on October 27, 2016. You do not inform us the department was closed for any business days between October 27, 2016, and November 10, 2016. Accordingly, you were required to provide the information required by section 552.301(b) by November 10, 2016. However, the envelope in which the county provided the information required by section 552.301(b) was postmarked November 16, 2016. *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 county 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. Information that is 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); *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. Although you raise section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See 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 section 552.103); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Because the county has failed to comply with the requirements of the Act, the county has waived its claim under section 552.103 of the Government Code. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Thus, the county may not withhold the submitted information under section 552.103 of the Government Code. However, because some of the submitted information is subject to sections 552.117 and 552.130 of the Government Code, which make information confidential under the Act and are compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions to the submitted information.¹

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the county must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

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. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from

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

him under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the county must withhold the motor vehicle record information we marked under section 552.130.

In summary, the county must withhold the information we marked under section 552.117(a)(2) of the Government Code. The county must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The county must release the remaining information.²

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 643846

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); Transp. Code § 550.065(c); ORD 481 at 4. Thus, the county must again seek a decision from this office if it receives another request for the same information from another requestor.