



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2017

Mr. J. R. Harris
Assistant County Attorney
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

OR2017-19333

Dear Mr. Harris:

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# 672214 (C.A. File No. 17PIA0318).

The Harris County Human Resources and Risk Management Department, the Office of Harris County Constable, Precinct 1 (collectively, the "county"), and the Harris County Attorney's Office (the "county attorney's office") received a request for information pertaining to a specified motor vehicle accident. You state the county attorney's office does not have information responsive to the request.¹ 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 note the county did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). 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. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. 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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

See id. § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the 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). In this instance, you state the county received the request for information on June 1, 2017. Accordingly, the county's ten and fifteen-business-day deadlines were June 15, 2017, and June 22, 2017, respectively. However, the envelope in which you provided the information required by section 552.301(b) was postmarked June 16, 2017, and the envelope in which you provided the information required by section 552.301(e) was postmarked June 23, 2017. *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). Consequently, the county failed to comply with the requirements of 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 unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). Although the county claims section 552.103 of the Government Code for the submitted information, we find the county has failed to establish a compelling reason to address its claim under this exception. However, because sections 552.117 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions to the submitted information.²

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.³ Gov't Code § 552.117(a)(2). Upon review, we find the county must withhold the information we 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

²This office will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

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 the motor vehicle record information of his clients under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the county must withhold the motor vehicle record information we marked and indicated under section 552.130 of the Government Code.

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 and indicated under section 552.130 of the Government Code. The county must release the remaining information.⁴

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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

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⁴We note the requestor has a special right of access to some of the information being released in this instance. Thus, the county must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 672214

Enc. Submitted documents

c: Requestor
(w/o enclosures)