



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 16, 2017

Mr. Thomas M. Gilliland
Public Information Officer
Harris County Sheriff's Office
1200 Baker Street
Houston, Texas 77002

OR2017-26268

Dear Mr. Gilliland:

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# 684483 (ORR# 17SO6001463).

The Harris County Sheriff's Office (the "sheriff's office") received a request for personnel records related to four named employees of the sheriff's office. The sheriff's office states it will release some of the requested information. The sheriff's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the sheriff's office claims and reviewed the submitted representative sample of information.¹

Initially, the sheriff's office indicates some of the submitted information, which it labeled Exhibits C, C-1, and C-2, is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the sheriff's office is not required to release such information in response to this request.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Next, we must address the sheriff's office'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(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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). The sheriff's office received the request for information on August 17, 2017. The sheriff's office states it was closed for business between August 25, 2017, and September 4, 2017. The sheriff's office does not inform us it was closed for any additional business days between August 25, 2017, and September 18, 2017. Accordingly, the sheriff's office was required to provide the information required by section 552.301(e) by September 18, 2017. However, the envelope in which the sheriff's office provided the information required by section 552.301(e) was postmarked September 19, 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). Accordingly, we conclude the sheriff's office 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 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); *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. The sheriff's office claims section 552.108 of the Government Code for the submitted information. Upon review, we find the sheriff's office has failed to establish a compelling reason to address its claimed exception. However, sections 552.102, 552.117, and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness.² Therefore, we will address the applicability of these exceptions to the submitted information.

²The 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).

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the sheriff’s office must withhold the employees’ dates of birth we have marked under section 552.102(a) of the Government Code.

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 sheriff’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the sheriff’s office must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

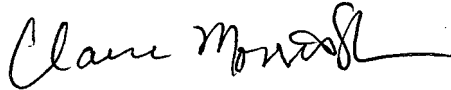
In summary, the sheriff’s office must withhold the employees’ dates of birth we marked under section 552.102(a) of the Government Code; the information we marked under section 552.117(a)(2) of the Government Code; and the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The sheriff’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.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, appearing to read "Claire V. Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 684483

Enc. Submitted documents

c: Requestor
(w/o enclosures)