March 15, 2023

\*\*\*\*\*\* REQUEST FOR OPEN RECORDS LETTER RULING \*\*\*\*\*

**VIA CERTIFIED MAIL**

Honorable Ken Paxton

### Attorney General of Texas

Supreme Court Building

P. O. Box 12548

Austin, Texas 78711-2548

Attention: Open Records Committee

Re: Public Information Request received by the Harris County Sheriff’s Office on February 23, 2023, from David Swire requesting any and all training materials regarding autism and autistic individuals used to educate or train would-be police officers or current, active-duty officers. *HCSO File Number* #23SO10024.

Dear Attorney General Paxton:

This is a follow-up to our letter dated March 7, 2023. *See* Exhibit A1. On February 23, 2023, the Harris County Sheriff’s Office (“HCSO”) received the enclosed written request from David Swire for any and all training materials regarding autism and autistic individuals used to educate or train would-be police officers or current, active-duty officers. *See* Exhibit “A2.”

By copy of this letter, the requestor is being notified that we believe the responsive information is excepted from public disclosure under Section 552.122 of the Texas Government Code, and that if the requestor should have any questions regarding the Texas Public Information Act, he/she may contact the Office of the Attorney General’s Hotline at (877) 673-6839.

##### ARGUMENT AND AUTHORITY

The HCSO deems the subject request to be one pursuant to the Texas Public Information Act, Tex. Gov’t Code §§ 552.001-552.353. The information has not been released, as the information requested appears to fall within an exception to the Texas Public Information Act, Tex. Gov’t Code § 552.101 *et seq*. The responsive information for which we are seeking an exception is enclosed. *See* Exhibit “B.”

The Public Information Act provides that ‘“public information” means information that is collected, assembled, or maintained under a law or ordinance, or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it ...” Tex. Gov’t Code § 552.002(a)(1) & (2). Public information must be disclosed unless the information falls within one of the Act’s specific exceptions to disclosure. Tex. Gov’t Code § 552.001, *et seq.*; Open Records Decision Nos. 511 (1988) & 363 (1983).

**Section 552.122 of the Texas Government Code**

Section 552.122 (b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), your office determined that the term ‘test item’ in section 552.122 includes any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated, but does not encompass evaluations of employee’s overall job performance or suitability. Generally, your office has applied section 552.122 where release of ‘test items’ might compromise the effectiveness of future examinations. *Id*. at 4-5; *see also* Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

The HCSO advises that Exhibit ‘B’ pertains to test items that were developed by the HCSO for the purpose of testing its deputies while training at the Academy. The HCSO objects to disclosure of the responsive information. Release of the information would give an unfair advantage to the HCSO job applicants and deputies in training and compromise the effectiveness of furture testing by increasing their chances of better test scores. Thus, the HCSO believes the information in Exhibit ‘B’ should be expected from public disclosure under 552.122.

The Harris County Sheriff’s Office respectfully requests a ruling on this matter. Please do not hesitate to contact our office at (346) 286-1550 if you need additional information.

Sincerely,

/s/ *Victoria Jimenez*

VICTORIA JIMENEZ

Director of Legal Services

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cc: David Swire

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