



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2012

Ms. Elizabeth S. Horn
Ms. Michele Tapia
Assistant City Attorneys
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2012-14009

Dear Ms. Horn and Ms. Tapia:

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# 463873.

The Carrollton Police Department (the "department") received a request for a specified police report involving the requestor's client. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, the department failed to meet the statutory deadlines imposed by section 552.301 of the Government Code. *See Gov't Code* § 552.301(e). 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*

¹Although you raise section 552.101 of the Government Code in conjunction with the Texas Supreme Court decision in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010) for the birth date in the submitted information, we understand you to raise section 552.102(a) of the Government Code, as that is the proper exception to raise for this information.

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. 319 (1982). Generally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). You seek to withhold information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and section 552.108 of the Government Code. The purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person. Thus, the informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the department's assertion of the informer's privilege does not provide a compelling reason for non-disclosure under section 552.302, and the department may not withhold any portion of the information at issue on that basis. Further, the exception under section 552.108 is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (statutory predecessor to section 552.108 discretionary). Accordingly, the department may not withhold the submitted information under section 552.108. However, you raise section 552.102 of the Government Code and additional arguments under section 552.101, which can provide compelling reasons to withhold information, and we will address the applicability of these sections to the submitted information.

You argue some of the information is excepted from disclosure pursuant to the case of *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court finds that legitimate law enforcement interests exist to withhold certain information related to active criminal cases). In this regard, we understand you to argue the information at issue is excepted under section 552.101 of the Government Code as information made confidential by judicial decision.² However, *Houston Chronicle* did not determine the confidentiality of any information for purposes of section 552.101. *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987) (confidentiality protected by section 552.101 requires express language making certain information confidential or requires that information not be released to public). Accordingly, we determine none of the submitted information may be withheld under section 552.101 in conjunction with the court's holding in *Houston Chronicle*.

Next, you raise section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Section 552.101 also encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after

²Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

September 1, 1997, are confidential under section 58.007(c) of the Family Code. This section provides as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). Upon review, we agree the submitted information consists of a law enforcement record of juveniles engaged in delinquent conduct after September 1, 1997. *See id.* §§ 51.02(2) (for purposes of section 58.007, "child" means person who is ten years of age or older and under seventeen years of age), .03(a) (defining

“delinquent conduct” for purposes of section 58.007). In this instance, however, the requestor is the attorney for one of the juvenile suspects in the submitted information. Thus, pursuant to section 58.007(e), the department may not withhold this information from the requestor under section 58.007(c). *See id.* § 58.007(e). However, personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted pursuant to section 58.007(j)(1) of the Family Code. *See id.* § 58.007(j)(1). Thus, the department must withhold the identifying information of the juveniles we have marked. We also note that section 58.007(j)(2) protects information that is excepted from required disclosure under the Act or other law. *See id.* § 58.007(j)(2). Accordingly, because you assert portions of the remaining information are excepted under section 552.102 of the Government Code, we will address your argument.

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*, 354 S.W.3d 336. In this instance, the birth dates at issue pertain to private citizens. Therefore, we conclude the department may not withhold the birth dates at issue under section 552.102(a).

We note some of the remaining information is subject to section 552.130 of the Government Code.³ Section 552.130 excepts from public disclosure information relating to a driver’s license or motor vehicle title or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130. Upon review, we find the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code and section 552.130 of the Government Code. The remaining information must be released.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.

³The 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).

⁴Because the information being released in this instance contains confidential information to which the requestor has a right of access, the department should again seek a decision from this office if the department receives another request for this same information from a different requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 463873

Enc. Submitted documents

c: Requestor
(w/o enclosures)