



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2012

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

OR2012-14447

Dear Ms. Horn:

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# 465028.

The City of Carrollton (the "city") received a request for the records, including photographs, related to a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted the requested photographs. To the extent the city maintains information responsive to this part of the request that existed on the date the request was received, we assume the city has released this information. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 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

¹Although you also raise section 552.103 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information, as required by section 552.301 of the Government Code. Thus, this ruling does not address section 552.103. *See* Gov't Code § 552.301(e)(1)(A), .302.

Code § 552.101. This section encompasses the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935,937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, Evidence in Trials at Common Law, § 2374, at 767 (J. McNaughton rev. ed. 1961))*. The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5*. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*. We note witnesses who provide information in the course of an investigation, but who do not make the initial report of a violation, are not informants for purposes of the common-law informer's privilege.

You raise the common-law informer's privilege for the identities of the complainants at issue in the submitted information. In this instance, however, this information reflects that the subject of the complaint already knows the identities of these individuals. Consequently, you have failed to demonstrate the applicability of the common-law informer's privilege to the identities of the individuals at issue, and none of the information you have highlighted may be withheld under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

You have highlighted the narrative portion of the submitted information 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. 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 the narrative portion of the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with the court's holding in *Houston Chronicle*.

Section 552.148 of the Government Code provides the following:

- (a) In this section, "minor" means a person younger than 18 years of age.

(b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:

- (1) the name, age, home address, home telephone number, or social security number of the minor;
- (2) a photograph of the minor; and
- (3) the name of the minor's parent or legal guardian.

Gov't Code § 552.148. You raise section 552.148 for some of the information you have highlighted. However, you provide no explanation how this information is maintained by the city for purposes related to the participation of a minor in a recreational program or activity. Accordingly, the city may not withhold the information you have highlighted under section 552.148 of the Government Code.

We note portions of the submitted information are subject to section 552.130 of the Government Code.² This section excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country, or to a personal identification document issued by a state agency or another state or agency or a local agency authorized to issue an identification document. *Id.* § 552.130(a)(1), (3). Accordingly, the city must withhold the driver's license number and personal identification document information we have marked under section 552.130 of the Government Code. The city must release the remaining information.³

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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note the requestor has a special right of access to some of the information being released pursuant to section 552.023 of the Government Code. See Gov't Code §§ 552.023(a) ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"), .130; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e). Thus, if the city receives another request for the same information from a person who does not have a right of access to the present requestor's private information, section 552.130(c) authorizes the city to redact the requestor's driver's license number without requesting another ruling.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 465028

Enc. Submitted documents

c: Requestor
(w/o enclosures)