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

OR2012-14492

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# 464684.

The City of Carrollton (the "city") received a request for police reports concerning two specified incidents. You state you do not possess a police report pertaining to one of the specified incidents.[1] You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.[2] We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under the Act. Section 552.301 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 ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state the city received the request for information on June 18, 2012. You do not inform us the city was closed for any business days between June 18, 2012 and July 2, 2012. Accordingly, the city's ten-business-day deadline was July 2, 2012. However, you did not request a ruling from this office until July 6, 2012. *See id.* § 552.308 (describing

[1]We note the Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d (Tex. Civ. App.—San Antonio 1978, writ dism'd).

[2]We understand you to raise section 552.108 of the Government Code based on the substance of your arguments.

rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the city failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code and the common-law informer's privilege. However, sections 552.103 and 552.108 of the Government Code and the common-law informer's privilege are discretionary exceptions to disclosure that protect only a governmental body's interests; thus, the city's claim under section 552.103, section 552.108, and the common-law informer's privilege are not compelling reasons to overcome the presumption of openness. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 549 at 6 (1990) (purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect third party), 177 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Accordingly, the city may not withhold the submitted information under section 552.103, section 552.108, or the common-law informer's privilege. However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

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 Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To establish the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. You seek to withhold the witnesses' dates of birth, home addresses, and telephone numbers in the submitted information. Although you generally assert this information is protected by common-law privacy, you have failed to provide any arguments explaining how this information constitutes highly intimate or embarrassing information that is not of legitimate concern to the public. Furthermore, this

office has determined that an individual's name, home address, and telephone number are generally not private information. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, home address and telephone number not invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers ordinarily not private). Thus, you have failed to demonstrate the applicability of common-law privacy to the witnesses' dates of birth, home addresses, and telephone numbers in the submitted records. Consequently, the city may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

You also argue some of the submitted 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. 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*. As you raise no further exceptions, the submitted information must be released.

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.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,

Jonathan Miles

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 464684

Enc. Submitted documents

c: Requestor
(w/o enclosures)