



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2012

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

Ms. Michele Tapia
Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2012-14581

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# 466145.

The City of Carrollton (the "city") received a request for a specified police report. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You argue some of the information you have highlighted 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

¹We understand you to raise sections 552.102(a) and 552.130 of the Government Code based on your arguments.

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 in conjunction with the court's holding in *Houston Chronicle*.

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. Section 552.101 encompasses the common-law informer's privilege, which Texas courts have long recognized. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). 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 the subject of the information does not already know the informer's identity. See Open Records Decision Nos. 515 at 3 (1988), 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 involve 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). However, witnesses who provide information in the course of an investigation, but do not make the initial report of a violation, are not informers for the purpose of the common-law informer's privilege.

You state the submitted report identifies a complainant who reported a possible violation of law to the city's police department. We understand the report is of a criminal violation. You do not inform us that the subject of the information knows the informer's identity. Based on your representations and our review, we conclude the city may withhold the complainant's identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have failed to demonstrate the remainder of the information you seek to withhold consists of the identifying information of an individual who made the initial report of a criminal or civil violation for purposes of the informer's privilege. Accordingly, the city may not withhold the remaining information you have marked under section 552.101 on that basis.

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 highlighted birth dates pertain to private citizens. Therefore, we conclude the city may not withhold the highlighted birth dates under section 552.102(a).

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license, title, or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1)-(2). Therefore, the city must withhold the information you have marked, and the additional information we have marked, under section 552.130.

In summary, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The city must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The remaining 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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 466145

Enc. Submitted documents

c: Requestor
(w/o enclosures)