



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2012

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

OR2012-14649

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# 465694.

The City of Carrollton (the "city") received a request for three specified police reports. You claim Exhibits C through E are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You state the city received the instant request on July 2, 2012. You inform us the city was closed on July 4, 2012. This office does not count holidays as business days for the purpose of calculating a governmental body's deadlines under the Act.

Thus, the city's fifteen-business-day deadline was July 24, 2012. The city submitted the requested information, however, in an envelope postmarked July 25, 2012. *See id.* § 552.308(a) (deadline under Act is met if document bears post office mark indicating time within deadline period). Therefore, we find the city failed to comply with the requirements of section 552.301(e) of the Government Code.

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 information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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 governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. You seek to withhold Exhibits C through E 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 protect a third person. Thus, the common-law informer's privilege, unlike your other argument under section 552.101 may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the city's claim under the common-law informer's privilege does not provide a compelling reason for non-disclosure under section 552.302. Furthermore, the exception under section 552.108 is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, no portion of Exhibits C through E may be withheld under section 552.108 of the Government Code. However, we will address your remaining arguments under sections 552.101, 552.130, and 552.148 of the Government Code because these sections can provide compelling reasons to withhold information.

You have highlighted the narrative portions of Exhibits C through E 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 portions of Exhibits C through E 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 in Exhibit D. However, you provide no explanation how the information at issue 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 in Exhibit D under section 552.148 of the Government Code.

Section 552.130(a)(2) of the Government Code provides that information relating to a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. *See id.* § 552.130(a)(2). You have highlighted a license plate number and a vehicle identification number in Exhibit D under section 552.130(a)(2). Upon review, we agree the city must withhold this information under section 552.130(a)(2) of the Government Code. As no further exceptions to disclosure are raised for the remaining information, the city must release it.

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,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal stroke extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 465694

Enc. Submitted documents

c: Requestor
(w/o enclosures)