



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 26, 2012

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

OR2012-15332

Dear 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# 466801.

The City of Carrollton (the "city") received a request for the police records of a named individual during a specified time period. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed 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. Section 552.101 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 demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has

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<sup>1</sup>Although you do not raise section 552.102 of the Government Code, we understand you to assert this exception based on your arguments.

significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

The instant request is for the police records of a named individual. This request for unspecified law enforcement records requires the city to compile the criminal history of the named individual, thus implicating the named individual's right to privacy. We note, however, the requestor may be acting as the named individual's authorized representative; therefore, she may have a right of access under section 552.023 of the Government Code to any information the city would otherwise be required to withhold from the public to protect this individual's privacy. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). We are unable to determine whether the requestor is acting as the authorized representative of the named individual. Therefore, we rule conditionally. If the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the city determines the requestor does not have a right of access under section 552.023 as the named individual's authorized representative, the city must withhold such information under section 552.101 in conjunction with common-law privacy. If the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the city determines the requestor has a right of access under section 552.023 as the named individual's authorized representative, the city may not withhold that information from this requestor as a compilation of the named individual's criminal history under section 552.101 in conjunction with common-law privacy. We note you have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. Thus, this information is not part of a criminal history compilation and may not be withheld as a compilation of the named individual's criminal history under section 552.101 in conjunction with common-law privacy. We, therefore, address your arguments under sections 552.101, 552.102, and 552.130 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 58.007 of the Family Code. The relevant language of section 58.007 reads:

(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.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You seek to withhold some of the submitted information under section 58.007(c). However, the information at issue does not identify a suspect or offender who is ten years of age or older and under seventeen years of age. As such, section 58.007 is not applicable and the city may not withhold any of the responsive information under section 552.101 on this basis.

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. 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*.

Section 552.101 of the Government Code also 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 common-law informer’s privilege protects from disclosure 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. *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 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). However, 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 the purpose of the common-law informer’s privilege.

You state the information you have highlighted identifies individuals who reported possible violations of the law to the city’s police department, which has the authority to enforce criminal law. Upon review, we conclude the city may withhold the identifying information of the complainants whose identities are unknown to the subjects of the complaints, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, we find the submitted information reveals the subject of one of the reported violations knows the identity of the informer at issue. Additionally, the remaining information you have highlighted identifies witnesses and a victim who did not report the violation to the city’s police department and, therefore, does not identify an informer. Consequently, the city may not withhold the remaining information at issue under section 552.101 in conjunction with the common-law informer’s privilege.

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 date under section 552.102(a).

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a). Accordingly, the city must generally withhold the information we have marked under section 552.130. However, we note section 552.130 is based on privacy principles. As noted above, it is not clear whether the requestor is acting as the named individual’s authorized representative. As such, this requestor may have a right of access to this information, and we must rule conditionally. *See id.* § 552.023; ORD 481 at 4. If the requestor does not have a right of access to this information, the city must withhold the information we marked under section 552.130 of the Government Code. Conversely, if the requestor has a right of access to the information at issue, the city may not withhold the

information we have marked pertaining to the named individual from this requestor under section 552.130. In either instance, the city must withhold the remaining information we have marked under section 552.130.

In summary, if the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the city determines the requestor does not have a right of access under section 552.023 of the Government Code as the named individual's authorized representative, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. The city must withhold the information we have marked under section 552.130 of the Government Code, but may only withhold the information we have marked pertaining to the named individual if the requestor is not acting as the named individual's authorized representative. The city must release the remaining information.

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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eb

Ref: ID# 466801

Enc. Submitted documents

c: Requestor  
(w/o enclosures)