



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2012

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

OR2012-15971

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# 467123.

The City of Carrollton (the "city") received a request for the witness statements pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.¹ 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 information protected by other statutes, such as section 58.007 of the Family Code, which provides in relevant part:

(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:

¹Although you raise section 552.101 of the Government Code in conjunction with the Texas Supreme Court decision in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010) for the birth dates in the submitted information, we understand you to raise section 552.102(a) of the Government Code, as that is the proper exception to raise for this information.

- (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). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). We note that, for purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we agree the submitted information involves delinquent conduct that occurred after September 1, 1997. Further, it does not appear that any of the exceptions in section 58.007 apply to this information. However, we are unable to determine whether the alleged offender identified in the submitted information was ten years of age or older and under seventeen years of age when the conduct at issue occurred. Therefore, we must rule conditionally. If the offender at issue was ten years of age or older and under seventeen years of age at the time of the conduct, the submitted information is confidential in its entirety pursuant to section 58.007(c) of the Family Code, and the city must withhold it under section 552.101 of the Government Code. If this offender was under ten years of age or was seventeen years of age or older at the time of the conduct, section 58.007 is not applicable to this information and it may not be withheld under section 552.101 in conjunction with section 58.007(c). For that situation, we will consider your remaining arguments against disclosure of the submitted information.

Section 552.101 of the Government Code also 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 identifying information of the individual who reported alleged violations of the law to the city's police department. Upon review, however, you have failed to demonstrate how any of the submitted information identifies or tends to identify an individual who made the initial report of possible violations to the city's police department for purposes of the common-law informer's privilege. Accordingly, the city may not withhold any of this information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the common-law right to privacy, protects information that (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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city must generally withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor is a parent of the adult individual whose information we have marked and the requestor indicates she is seeking the submitted information for this individual. Under section 552.023 of the Government Code, "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." Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Thus, if the requestor is not acting as the authorized representative of the individual at issue, then the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is acting as the authorized representative of this individual, then she has a right of access to the information we have marked pursuant to section 552.023, and the city may not withhold this information under section 552.101 in conjunction with common-law privacy.

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 v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 348 (Tex. 2010). Thus, under *Texas Comptroller*, section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context. In this instance, the birth dates at issue are contained in a police report, which the city is not holding in an employment context. Therefore, we conclude the city may not withhold the birth dates at issue under section 552.102(a) of the Government Code.

In summary, if the offender at issue was ten years of age or older and under seventeen years of age at the time of the incident, the submitted information is confidential in its entirety pursuant to section 58.007(c) of the Family Code, and the city must withhold it under section 552.101 of the Government Code. If this offender was under ten years of age or was seventeen years of age or older at the time of the conduct, this information may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. In that case, if the requestor is not acting as the authorized representative of the individual whose information we have marked, then the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and must release the remaining information. However, if the requestor is acting as the authorized representative of this individual, then she has a right of access to the information we have marked pursuant to section 552.023 of the Government Code, and the city must release the entirety of the submitted 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, 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# 467123

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**