ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2006

Mr. Warren Spencer
Legal Advisor
Plano Police Department
P. O. Box 860358
Plano, Texas 75086-0358

OR2006-10907

Dear Mr. Spencer:

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# 263606.

The Plano Police Department (the "department") received a request for all reports involving a specified address from January, 2000 to the present. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that Exhibit B is excepted under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

> The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
>
> (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

> (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The information at issue consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining "abuse" and "neglect" for purpose of chapter 261 of the Family Code). You do not indicate that the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude that Exhibit B is confidential pursuant to section 261.201 of the Family Code, and the department must withhold it under section 552.101 of the Government Code.[1]

Section 552.101 also encompasses section 58.007(c) of the Family Code. Section 58.007(c) provides in pertinent 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:
>
> > (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 Subchapter B.

Fam. Code § 58.007(c). We find that Exhibit C involves an allegation of juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" for purposes of title 3 of Family Code). It does not appear that any of the exceptions in section 58.007 apply in this instance; therefore, Exhibit C must be withheld in

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[1]We note that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, a parent of the child may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

In summary, the department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Exhibit C must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

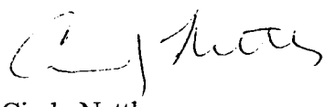
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/vh

Ref: ID# 263606

Enc. Submitted documents

c: Ms. Molly Mccormick-buxbaum
7633 Twelve Oaks Circle
Plano, Texas 75025
(w/o enclosures)