



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 7, 2008

Ms. Teresa J. Brown  
Senior Open Records Specialist  
City of Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2008-00235

Dear Ms. Brown:

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# 298995.

The Plano Police Department (the "department") received a request for specified police reports. You state that some of the requested information has been released to the requestor. You claim that report numbers 05-12374 and 07-142688 are excepted from disclosure under section 552.101 of the Government Code. Alternatively, you state that the department will withhold report number 07-142688 based upon a previous determination for withholding information under section 552.108(a)(1) granted by the ruling in *Attorney General v. Plano Police Department*, No. GV-001919 (126<sup>th</sup> Dist. Ct., Travis County, Tex., December 18, 2000). We have considered the exception you claim and reviewed the submitted information.

Section 552.101 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 section 261.201 of the Family Code, which provides in part:

(a) 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, audiotapes, videotapes, 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). Report number 07-142688 relates to an allegation of child abuse for purposes of chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code). Upon review, we find that this report falls within the scope of section 261.201. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given this assumption, we conclude that report number 07-142688 is confidential pursuant to section 261.201 of the Family Code and must therefore be withheld in its entirety pursuant to section 552.101 of the Government Code.<sup>1</sup> Although report number 05-12374 contains references to alleged injury to a child, you do not explain, and the submitted information does not otherwise indicate, how the department’s documents were used or developed in an investigation of child abuse or neglect for chapter 261 purposes. Rather, the investigation is of an assault between two adults. We therefore determine that section 261.201 is not applicable to the department’s report listed as number 05-12374. However, the Department of Family and Protective Services’ report is confidential under section 261.201. Accordingly, with the exception of the information that we have marked to be withheld, the department may not withhold the remaining information in this report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses the common-law right of 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs,

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<sup>1</sup>We note that if the Texas Department of Family and Protective Services has created a file on this case, the child’s parent(s) may have the statutory right to review the file. *See* Fam. Code § 261.201(g).

illnesses, operations, and physical handicaps). We have marked information in report number 05-12374 that the department must withhold under section 552.101 in conjunction with common-law privacy.

We also note that report number 05-12374 contains information subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. Because this exception protects personal privacy, the requestor has a right of access to her own Texas driver’s license information under section 552.023 of the Government Code. *See id.* § 552.023(a) (a person or 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.”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, the requestor’s driver’s license information may not be withheld in this instance under section 552.130 and must be released. The department must withhold the Texas driver’s license information that we have marked pursuant to section 552.130 of the Government Code.

In summary, the department must withhold report number 07-142688 in its entirety and the information that we have marked in report number 05-12374 under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. The department must withhold the information that we have marked in report 05-12374 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the Texas driver’s license information that we have marked pursuant to section 552.130 of the Government Code.<sup>3</sup> The remaining information must be released to the requestor.

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

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

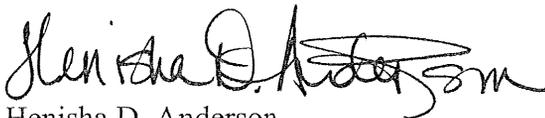
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/mcf

Ref: ID# 298995

Enc. Submitted documents

c: Ms. Veronica Salters  
3505 Silas Court  
Plano, Texas 75093  
(w/o enclosures)