



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2009

Mr. Joseph J. Gorfida, Jr.
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2009-11083

Dear Mr. Gorfida:

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# 351579 (your file number 09-363).

The Richardson Police Department (the "department") received a request for all documents regarding 9-1-1 calls concerning two named individuals over a specified time period. You indicate the department has released some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. 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 former section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports that identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 applies only to records of a "child," which is defined as a person who is ten

years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). In this instance, incident report number 95-90376 pertains to an investigation of juvenile delinquent conduct that occurred prior to January 1, 1996. *See id.* § 51.03 (defining "delinquent conduct"). Therefore, incident report number 95-90376 is confidential under former section 51.14(d) of the Family Code and must be withheld under section 552.101 of the Government Code. *See id.* § 51.04(a) (title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by a child).

Section 552.101 of the Government Code also 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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Id. § 261.201(a). You claim incident report number 96-40158 is confidential under section 261.201(a). Upon review, however, we find you have not adequately demonstrated that this incident report constitutes a report of alleged or suspected child abuse made under chapter 261, or how this information was used or developed in an investigation under chapter 261. *See* Fam. Code § 261.201(a). Accordingly, the department may not withhold incident report number 96-40158 on the basis of section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses the doctrine of common-law privacy and excepts from public disclosure private information about an individual if the information (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 or 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. Additionally, 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 Nos. 470 (1987) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find that portions of the submitted information are intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, section 552.130 of the Government Code 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. You have marked information that you claim is excepted from disclosure under section 552.130. Upon review, we agree the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. However, the remaining information you have marked does not relate to a motor vehicle operator's or driver's license or permit, or a motor vehicle title or registration. Therefore, the department may not withhold the remaining information you have marked under section 552.130.

In summary, (1) the department must withhold incident report number 95-90376 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code; (2) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.¹

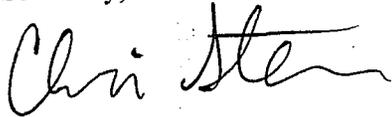
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹We note the remaining 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.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 351579

Enc. Submitted documents

c: Requestor
(w/o enclosures)