ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2009

Mr. Bryan McWilliams
Assistant City Attorney
City of Amarillo
P. O. Box 1971
Amarillo, Texas 79105-1971

OR2009-14892

Dear Mr. McWilliams:

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# 358996.

The City of Amarillo (the "city") received a request for all records, photographs, wiretaps, audio and video recordings involving the requestor and the Amarillo Police Department between 1980 and July 2009. You state some responsive information has been made available to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. You have also redacted some social security numbers from the responsive information pursuant to section 552.147 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted representative sample of information.[2]

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[1]We note that section 552.147(b) 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.

[2]We assume that the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. This exception encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* § 411.090-.127. Furthermore, any CHRI obtained from the DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find a portion of the requested information constitutes CHRI. We have marked the information the city must withhold pursuant to section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

> (a) [T]he following information is confidential, is not subject to public release under [the Act] 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.
>
> . . .

> (k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.
>
> (l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:
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> > (1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:
> >
> > (A) the child who is the subject of the report; or
> >
> > (B) another child of the parent, managing conservator, or other legal representative requesting the information;
> >
> > (2) any information that is excepted from required disclosure under [the Act], or other law; and
> >
> > (3) the identity of the person who made the report.

Act of April 10, 1995, 74th Leg., R.S., ch. 20, § 1, sec. 261.201, 1995 Tex. Gen. Laws 113, 262, *amended by* Act of June 1, 2009, 81st Leg., R.S., ch. 779, §1, 2009 Tex. Sess. Law Serv. 1965, 1965–66 (Vernon) (to be codified as an amendment to Fam. Code § 261.201(a)) and Act of June 3, 2009, 81st Leg., R.S., ch. 1377, § 13, 2009 Tex. Sess. Law Serv. 4324, 4327–28 (Vernon) (to be codified at Fam. Code § 261.201(k), (l)). You state that a portion of the requested information was used or developed in investigations into alleged child abuse or neglect. Based on your representations and our review of the information at issue, we agree that a portion of the requested information is subject to section 261.201 of the Family Code. *See id.* § 261.001(1) (defining "abuse" and "neglect" for purposes of Family Code ch. 261); *see also id. § 101.003*(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). As you do not indicate that the city has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the city must withhold the information related to Case No. 2007-00101529 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision

No. 440 at 2 (1986) (addressing predecessor statute). However, the requestor is the parent of the child victim listed in Case No. 2003-00126017, and the parent is not alleged to have committed the suspected abuse. In this instance, the city may not use section 261.201(a) to withhold this information from this requestor. *Id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). We have marked the information identifying the reporting party that must be withheld under section 261.201(l)(3) of the Family Code. Upon review, we find that the remaining information you have marked under section 261.201 was not used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. We therefore conclude that the remaining information is not confidential under section 261.201(a) of the Family Code and may not be withheld from the requestor on that basis in conjunction with section 552.101 of the Government Code.

Section 552.101 also encompasses 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:
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> > (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, D, and E.

Fam. Code § 58.007(c). We have reviewed the submitted information and find that a portion of it involves allegations of juvenile delinquent conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Therefore, the information related to case numbers 1997-00078663 and 1998-00093699 are confidential pursuant to section 58.007(c) of the Family Code, and must be withheld in their entirety under section 552.101 of the Government Code. Although you raise section 58.007 of the Family Code for a portion of the remaining information involving conduct that occurred after September 1, 1997, you have not explained, and the information does not reflect, how it constitutes law enforcement records or files concerning an identified juvenile suspect or offender. Accordingly, no portion of the remaining

information may be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note that section 58.007 is inapplicable to the remaining information you have marked on that basis because the conduct in the information at issue occurred in 1990 and 1991. Former section 51.14 of the Family Code is the applicable provision in this instance. Prior to its repeal by the Seventy-Fourth Legislature, section 51.14(d) 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 which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile 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 only applies 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, a portion of the remaining information involves juvenile delinquent conduct that occurred in 1990 and 1991. Therefore, this information, which we have marked, is confidential under former section 51.14 of the Family Code and must be withheld in its entirety 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 child).

Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* The requested information includes CR-3 accident report forms that were completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). In this instance, the requestor has not provided the city with two of the three requisite pieces of information. Therefore, the city must withhold the CR-3 accident report forms under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses information made confidential by section 371.206 of the Finance Code, which reads as follows:

> Information obtained during an examination or inspection authorized by this subchapter is confidential and privileged except for use by the [consumer credit] commissioner or in a criminal investigation or prosecution.

Fin. Code § 371.206. Additionally, section 371.204 of the Finance Code requires a pawnbroker to allow a peace officer to inspect the pawnbroker's books, accounts, papers, correspondence, or other records that relate to the business of the pawnbroker at any reasonable time without judicial writ or other process. *See id.* § 371.204. You state that a portion of the requested information was acquired during an examination or inspection of a pawn shop as authorized under section 371.204. Based upon your representation and our review, we conclude that the information we have marked is confidential pursuant to section 371.206 of the Finance Code and must therefore be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See 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* include 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. To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Upon review, we conclude that the remaining information is not intimate or embarrassing and is a matter of legitimate public interest. Thus, none of the remaining information is confidential under common-law privacy, and the city may not withhold it on that basis under section 552.101 of the Government Code.

Next, you raise section 552.130 of the Government Code for some of the remaining information. Section 552.130 excepts from disclosure "information [that] relates to: (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a). We note section 552.130 does not apply to out-of-state motor vehicle record information. A portion of the information you have marked pertains to a vehicle registered out-of-state. The city must withhold the information we have marked pursuant to section 552.130. The city requests a previous determination allowing the city to withhold Texas motor vehicle record information without seeking a decision from this office in the future. We decline the city's request for a previous determination on this issue.

You raise section 552.136 for a portion of the remaining information. Section 552.136(b) states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge

card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Accordingly, the city must withhold the credit card number we have marked under section 552.136 of the Government Code.

We note the remaining information includes e-mail addresses subject to section 552.137 of the Government Code.[3] Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purposes of communicating electronically with a governmental body," unless the member of the public consents to its release, or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137 (a)-(c). We have marked e-mail addresses in the remaining information that are not of a type specifically excluded by subsection (c). Accordingly, the city must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owners affirmatively consents to their disclosure.

In summary, the city must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.083 of the Government Code. The city must withhold the information related to Case No. 2007-00101529 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the identity of the reporting party, which we have marked, in Case No. 2003-00126017 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the information related to case numbers 1997-00078663 and 1998-00093699 in their entirety pursuant to section 58.007(c) of the Family Code in conjunction with section 552.101 of the Government Code. The city must also withhold the information we have marked under former section 51.14 of the Family Code in conjunction with section 552.101 of the Government Code. The city must withhold the CR-3 accident report forms under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The city must also withhold the information we have marked under section 371.206 of the Finance Code in conjunction with section 552.101 of the Government Code. The city must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130, and the credit card number we have marked under section 552.136 of the Government Code. The city must also withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consents to their disclosure. The remaining information must be released.[4],[5]

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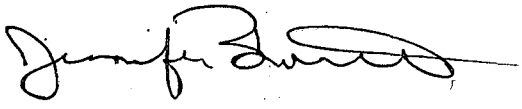
[3]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[4]We note the information being released contains social security numbers not belonging to the requestor. 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.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 358996

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[5]The requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a). Because such information may be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.