



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 20, 2009

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

OR2009-16564

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# 362150.

The Plano Police Department (the "department") received a request for police reports relating to a specified range of addresses and occurring over a period of time, including one specified report number. You indicate some information has been released. You claim that the submitted 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.

Section 552.101 of the Government Code excepts from public 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. Section 261.201(a) of the Family Code provides as follows:

(a) [T]he 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). You state submitted Exhibit B consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in investigations under chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of Fam. 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). Based on your representations, we agree this information is within the scope of section 261.201. 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 Exhibit B is confidential pursuant to section 261.201 of the Family Code, and the department must withhold it in its entirety under section 552.101 of the Government Code.

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides as follows:

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 Subchapters B, D, and E.

*Id.* § 58.007(c). 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); *see also id.* §§ 58.007. You state submitted Exhibit C consists of reports subject

to section 58.007(c). Upon review, we agree that some of the reports at issue, which we have marked, pertain to juvenile runaways and juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). Thus, these records are subject to section 58.007. It does not appear that any of the exceptions in section 58.007 of the Family Code apply. Therefore, the reports that we have marked are confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. We note, however, that section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects, offenders, or defendants. *See id.* § 58.007(c). The remaining report at issue does not contain any juveniles listed as suspects, offenders, or defendants; therefore, it may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses section 611.002 of the Health and Safety Code, which governs the public availability of mental health records. Section 611.002 provides in part:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002(a); *see id.* § 611.001 (defining “patient” and “professional”). We have marked mental health records that the department must withhold under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

Section 552.101 also encompasses the doctrines of constitutional privacy and common-law privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy,” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

Common-law privacy protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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 some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find portions of the remaining information are highly intimate or embarrassing and of no legitimate public interest. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information is not intimate or embarrassing or is of legitimate public interest. Thus, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy. Further, we find the department has failed to demonstrate how any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Thus, none of the remaining information may be withheld under section 552.101 on that basis.

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."<sup>1</sup> Gov't Code § 552.130(a). Accordingly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold (1) Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, (2) the reports we marked under section 552.101 in conjunction with section 58.007 of the Family Code, (3) the mental health records we marked under section 552.101 in conjunction with section 611.002 of the Health and Safety Code, (4) the information we marked under section 552.101 in conjunction with common-law privacy, and (5) the Texas motor vehicle record information we marked under section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

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<sup>1</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>2</sup>We note the information being released 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.

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](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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/dls

Ref: ID# 362150

Enc. Submitted documents

c: Requestor  
(w/o enclosures)