



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2013

Ms. Delietrice Henry  
Open Records Assistant  
City of Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2013-09192

Dear Ms. Henry:

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# 489084 (Plano ORR #ROSD031513).

The Plano Police Department (the "department") received a request for reports and calls for service regarding the requestor and a named individual at a specified address from the year 2000 until the date of the request. You state you have released some of the information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the department has redacted certain information from Exhibit B. However, you do not assert, nor does our review of our records indicate, the department has been authorized to withhold the redacted information without seeking a ruling from this office. *See id.* § 552.301(a); ORD 673. Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See Gov't Code* §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), .302.

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<sup>1</sup>Although you do not raise section 552.130 of the Government Code in your brief, we understand you to raise this exception based on your markings.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses section 261.201 of the Family Code, which states in relevant part:

(a) Except as provided by Section 261.203, 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] 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.

Fam. Code § 261.201(a), (k). You contend the information in Exhibit B is subject to section 261.201 of the Family Code. Upon review, we agree the information in Exhibit B was used or developed in an investigation of the alleged child abuse. *See id.* § 261.001(1)(E) (definition of “abuse” includes sexual assault of a child under Penal Code section 22.011); *see also* Penal Code § 22.011 (defining “child” for purposes of sexual assault of a child as person under 17 years of age). We note the requestor is the parent of the child victim listed in the submitted reports. However, the submitted information reflects the requestor is alleged to have committed the alleged abuse. Thus, the requestor does not have a right of access to the information in Exhibit B under section 261.201(k). *See* Fam. Code § 261.201(k). Accordingly, the department must withhold Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 also encompasses section 58.007 of the Family Code, which provides in 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “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). Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. *See id.* § 58.007(c). Upon review, we find Exhibit D does not involve a juvenile identified as a suspect, offender, or defendant. Thus, you have failed to demonstrate how Exhibit D is subject to section 58.007(c) of the Family Code and the department may not withhold it under section 552.101 on that basis.

Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information is excepted from required public disclosure by a common-law right of privacy if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685.

Exhibit C relates to a sexual assault. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or

embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). We note that the requestor in this case knows the identity of the alleged victim. Accordingly, we believe that withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We conclude, therefore, that the department must withhold Exhibit C in its entirety pursuant to section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have marked in Exhibit E relates to a closed investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree the department may withhold the information you marked in Exhibit E under section 552.108(a)(2) of the Government Code.

You seek to withhold the license plate number, a driver's license number, and a state identification card number you have marked in Exhibit E. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. However, we note section 552.130 protects personal privacy. Thus, the requestor has a special right of access to his own motor vehicle record and state identification card information. *See id.* § 552.023(a) (person or a person's authorized representative has special right of access, beyond the right of general public, to information held by a governmental body that relates to person and is protected from public disclosure laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the department may not withhold from the requestor his own state identification card number, but must generally withhold the license plate number and driver's license number we have marked in Exhibit E under section 552.130. However, it is not clear whether the license plate number belongs to the requestor. Thus, to the extent the license plate number belongs to the requestor, the requestor also has a right of access under section 552.023 to the marked license plate number, and the department must release this information to the requestor. To the extent the requestor does not have a right of access under section 552.023, the department must withhold the marked license plate number under section 552.130.

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. The department must also withhold Exhibit C under section 552.101 of the Government Code in conjunction

with common-law privacy. The department may withhold the information you have marked in Exhibit E under section 552.108(a)(2) of the Government Code. The department must generally withhold the information we have marked in Exhibit E under section 552.130 of the Government Code. However, to the extent the requestor has a right of access to the marked license plate number, the department must release this information to the requestor. The remaining information must be released.<sup>2</sup>

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.texasattorneygeneral.gov/open\\_orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open_orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/dls

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<sup>2</sup>Because the requestor has a special right of access to information being released, we note that if the department receives another request for this information, the department may withhold the requestor's state identification card number pursuant to section 552.130(c) of the Government Code without the necessity of requesting a decision from this office. We also note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold certain categories of information, including a Texas license plate number under section 552.130(a)(2), without the necessity of requesting an attorney general decision. However, the Texas legislature recently amended section 552.130 to allow a governmental body to redact the information described in subsection 552.130(a)(2) of the Government Code without the necessity of seeking a decision from the attorney general. Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Gov't Code § 552.130(d),(e). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to subsection 552.130(a)(2) only in accordance with section 552.130, not Open Records Decision No. 684. Accordingly, if the department receives another request for this same information from a different requestor, section 552.130(c) authorizes the department to redact the requestor's state identification card number and Texas license plate number without seeking a ruling from this office.

Ref: ID# 489084

Enc. Submitted documents

c: Requestor  
(w/o enclosures)