



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2014

Mr. David Ritter
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2014-01725

Dear Mr. Ritter:

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# 512454.

The Plano Police Department (the "department") received a request for all 9-1-1 call records pertaining to two specified addresses during a defined time frame. You claim 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 section 261.201(a) of the Family Code, which provides:

(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.

Fam. Code § 261.201(a). Upon review, we find call report number PLPD10-212042 was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 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 disabilities of minority removed for general purposes). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Therefore, call report number PLPD10-212042 is confidential in its entirety pursuant to section 261.201(a) of the Family Code, and the department must withhold call report number PLPD10-212042 under section 552.101 of the Government Code.

Section 552.101 also encompasses information made confidential by section 58.007 of the Family Code, which protects juvenile law enforcement records related to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997. Section 58.007 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:

(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). Some of the submitted call reports involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of Fam. Code title 3). It does not appear any of the exceptions in section 58.007 apply. Therefore, the department must generally withhold the information we have marked

under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, we are unable to determine the ages of some of the offenders at issue in call report numbers TRU10-214161, PLPD10-214164, and PLPD12-098466; thus, we must rule conditionally as to these reports. To the extent the information we have indicated constitutes records of juveniles engaged in delinquent conduct who were ten years of age or older and under seventeen years of age at the time of the conduct, the information at issue is confidential pursuant to section 58.007(c) of the Family Code and must be withheld from this requestor under section 552.101 of the Government Code. However, to the extent this information does not pertain to suspects who were ten years of age or older and under seventeen years of age at the time of the conduct, the department may not withhold it under section 552.101 on the basis of section 58.007. In that instance, as you raise no further exceptions to disclosure for call report number PLPD12-098466, it must be released. However, we will address your argument under the common-law informer's privilege for call report numbers TRU10-214161 and PLPD10-214164.

You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279 at 1-2 (1981)* (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988)*.

You seek to withhold some of the information in call report numbers TRU10-214161 and PLPD10-214164 under the informer's privilege. You state some of the information at issue identifies an individual who reported to the department possible violations of law. We have no indication the subjects of the complaints are aware of the identity of the informer. Based upon your representations and our review, we conclude the department has demonstrated the applicability of the common-law informer's privilege to some of the information at issue, which we have marked. Therefore, the department may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

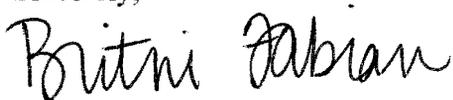
In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 261.201 and 58.007 of the Family Code. To the extent any offenders identified in call report numbers TRU10-214161, PLPD10-214164, and PLPD12-098466 were ten years of age or older and under seventeen years of age at the time of the conduct, these reports are

confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. However, if none of the offenders at issue were ten years of age or older and under seventeen years of age at the time of the conduct, then the department may withhold the information we marked in call report numbers TRU10-214161 and PLPD10-214164 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining information must be released.

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, 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/tch

Ref: ID# 512454

Enc. Submitted documents

c: Requestor
(w/o enclosures)