



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2014

Ms. Doris Preusse  
Senior Records Clerk  
Pflugerville Police Department  
P.O. Box 679  
Pflugerville, Texas 78691

OR2014-22409

Dear Ms. Preusse:

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# 546639 (Pflugerville Reference Numbers: W001607-092314, W001608-092314, W001609-092314, W001610-092314, W001611-092314, W001612-092314).

The Pflugerville Police Department (the "department") received six requests from the same requestor for all call sheets and police reports referencing a specified address from the years 2009 through 2014. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

---

<sup>1</sup>Although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup>We assume that the "representative sample" of records 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.

Initially, we note portions of the requested information were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-21369 (2014). In that ruling, we determined the department must respond to the request by stating a portion of the requested information does not exist in accordance with the submitted order of restricted access and section 58.207(b) of the Family Code. Additionally, the department must withhold the portions of the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, section 261.201(a) of the Family Code, and common-law privacy; and under section 552.130 of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2014-21369 was based have changed. Accordingly, the department must continue to rely on Open Records Letter No. 2014-21369 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling.<sup>3</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your remaining arguments for the submitted information not encompassed by the previous ruling.

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. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201(a) 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). Upon review, we find the portions of the submitted information consist of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.*

---

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of Fam. Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 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 the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Therefore, we conclude the information we have marked is confidential under section 261.201(a). Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, we find you have failed to demonstrate how any of the remaining information pertains to an investigation or suspected or alleged abuse or neglect of a child under chapter 261 the Family Code. Therefore, the remaining information may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code 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:

(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). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). 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). Upon review, we find the information we have marked involves delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Further, it does not appear that any of the exceptions in section 58.007 apply to this information. Accordingly, the department must 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

find you have failed to demonstrate how any of the remaining information involves a juvenile engaged in delinquent conduct or conduct indicating a need for supervision as defined by the Family Code. Therefore, the remaining information may not be withheld under section 552.101 of the Government Code on that basis.

We also understand you to raise section 552.101 of the Government Code in conjunction with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") for the submitted information. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

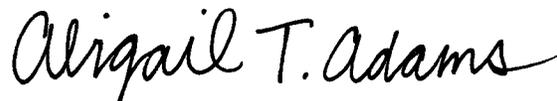
This office addressed the interplay of the Privacy Rule and the Act in Open Records Decision No. 681 (2004). In that decision, we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." *See* ORD 681 at 8; *see also* Gov't Code §§ 552.002, .003, .021. We therefore held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9 (2004); *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the department may not withhold any portion of the information at issue on that basis.

In summary, the department must continue to rely on Open Records Letter No. 2014-21369 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The department must withhold the information we have marked in the remaining information under section 552.101 of the Government Code in conjunction with sections 261.201 and 58.007 of the Family Code. The department must release the remaining submitted information.

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,

A handwritten signature in black ink that reads "Abigail T. Adams". The signature is written in a cursive, flowing style.

Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/ac

Ref: ID# 546639

Enc. Submitted documents

c: Requestor  
(w/o enclosures)