



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2007

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

CORRECTED COPY

OR2007-13867A

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# 292727.

This office issued Open Records Letter No. 2007-13867 (2007) to the Plano Police Department (the "department") on October 24, 2007. In that ruling we concluded, among other things, that report number 2007-00075792 was not within the scope of section 261.201 of the Family Code and could not be withheld under section 552.101 of the Government Code on that basis. The department subsequently informed this office that report number 2007-00075792 was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2007-07998 (2007), which held that report number 2007-00075792 was confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.¹ Because Open Records Letter Nos. 2007-07998 and 2007-13867 resulted in conflicting conclusions, we determine that there was an error made in the issuance of Open Records Letter No. 2007-13867. When this office determines that an error was made in the decisional process under section 552.306 of the Government Code and that the error resulted in an incorrect decision, we will correct the previously issued ruling. As we have determined that Open Records Letter

¹We note that in the department's first request for a ruling for the report at issue, the department informed this office that the Advocacy Center referenced in the report is the location of Child Protective Services. This information was not provided in the department's second request for a ruling regarding this same report.

No. 2007-13867 is incorrect, we hereby withdraw that ruling. This decision is substituted for Open Records Letter No. 2007-13867 and serves as the correct ruling.

The department received a request received a request for three specified police reports. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As stated above, report number 2007-00075792 was the subject of Open Records Letter No. 2007-07998. Accordingly, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on this ruling as a previous determination and withhold or release this information in accordance with Open Records Letter No. 2007-07998. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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). For the two reports not previously ruled upon in Open Records Letter No. 2007-07998, we address your arguments.

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. Section 552.101 encompasses section 261.201 of the Family Code, which provides in part:

(a) 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). Report number 2007-00108499 relates to an allegation of child abuse for purposes of chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code). Upon review, we find that this report falls within the scope of section 261.201. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given this assumption, we conclude that report number 2007-00108499 is confidential pursuant to section 261.201 of the Family Code and must therefore be

withheld in its entirety pursuant to section 552.101 of the Government Code.² The remaining submitted report, report number 2007-00103516, was not used or developed in an investigation of child abuse or neglect. Thus, this report is not within the scope of section 261.201 of the Family Code and may not be withheld under section 552.101 of the Government Code on that basis.

You claim that the remaining report, report number 2007-00103516, is excepted from disclosure under section 552.108(a)(1) of the Government Code. You state that you will withhold the information at issue under section 552.108(a)(1), as it relates to a pending criminal case, based upon the ruling in *Attorney General v. Plano Police Department*, No. GV-001919 (126th Dist. Ct., Travis County, Tex., December 18, 2000). With the exception of basic information, which must be released, the department may withhold the remaining report in accordance with the ruling in *Attorney General v. Plano Police Department*.

In summary, the department must continue to rely on our prior ruling is Open Records Letter No. 2007-07998 for report number 2007-00075792. The department must withhold report number 2007-00108499 pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must be released, the department may withhold report number 2007-00103516 in accordance with the ruling in *Attorney General v. Plano Police Department*.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

²We note that if the Texas Department of Family and Protective Services has created a file on this case, the child's parent(s) may have the statutory right to review the file. *See* Fam. Code § 261.201(g).

Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/jb

Ref: ID# 292727

Enc. Submitted documents

c: Ms. Janet Brown
4313 Peggy Lane
Plano, Texas 75074
(w/o enclosures)