



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2008

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

OR2008-17213

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# 330400.

The Plano Police Department (the "department") received a request for information pertaining to five specified individuals. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. Gov't Code § 552.101. You claim that incident report No. 200000037435 is excepted from disclosure pursuant to section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(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 Subchapter B.

Fam. Code § 58.007. Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. After reviewing the submitted information, we find that report No. 200000037435 pertains to conduct which is within the scope of section 58.007. *See id.* § 51.03. Further, the incident at issue occurred after September 1, 1997. Thus, report No. 200000037435 is within the scope of section 58.007(c). In addition, none of the exceptions in section 58.007 appear to apply. Therefore, the department must withhold report No. 200000037435 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Next, you claim that report No. 200100024423 is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(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 [the Family 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 [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Id. § 261.201(a). You indicate that the information at issue was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1)(E). Thus, report No. 200100024423 falls within the scope of section 261.201(a). 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 that assumption, we find that report No. 200100024423 is confidential pursuant to section 261.201 of the Family Code and is generally excepted from public disclosure pursuant to section 552.101 of the Government Code. However, section 261.201 of the Family Code also provides that information

encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.*

We note that chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1285(a) of the Government Code provides in part that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Department of Public Safety] criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.” *See* Gov’t Code § 411.1285.¹ In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov’t Code § 411.087(a)(2). We note that “criminal history record information” is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See* Gov’t Code § 411.082(2). Thus, the information at issue contains “criminal history record information.” However, a domestic relations office that receives criminal history record information from a criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for specified purposes, which include conducting a social study under subsection D, chapter 107 of the Family Code. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, if the requestor in this instance is a domestic relations office created under chapter 203 of the Family Code, then it is authorized to obtain criminal history record information that relates to person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203 of the Family Code pursuant to section 411.087(a)(2) of the Government Code. *See* Gov’t Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a).

¹A “domestic relations office” is defined as “a county office that serves families, county departments, and courts to ensure effective implementation of this title.” Fam. Code § 203.001(2). Additionally, a district court may order the preparation of a social study into the circumstances and condition of a child and of the home of any person requesting conservatorship, possession, or access to the child.” Fam. Code § 107.051(a).

The department received this request from the Dallas County Family Court Services (the "DCFCS") and the request indicates that the information will be used in a "court ordered social study." If the department determines that the DCFCS is conducting a social study under chapter 107 of the Family Code and that disclosure of report No. 200100024423 is consistent with the Family Code in this instance, then we find that the department must make available to the requestor information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that case, the department must withhold the remaining information in report No. 200100024423 pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, if the department determines that the DCFCS does not intend to use criminal history record information at issue for purposes consistent with the Family Code, the department must withhold report No. 200100024423 pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information); *see also* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

In summary, the department must withhold report No. 200000037435 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If the department determines that the DCFCS intends to use the criminal history record information in report No. 200100024423 for purposes of conducting a social study under chapter 107 and that disclosure of such information is consistent with the Family Code, the department must make available to the requestor the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that case, the department must withhold the remaining information in report No. 200100024423 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In the event the department determines that the DCFCS does not intend to use the criminal history record information in report No. 200100024423 for purposes consistent with the Family Code, the department must withhold report No. 200100024423 in its entirety under section 552.101 in conjunction with section 261.201.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 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 challenge 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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/cc

Ref: ID# 330400

Enc. Submitted documents

c: Requestor
(w/o enclosures)