



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2009

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

OR2009-05908

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# 341966.

The Plano Police Department (the "department") received a request for information regarding four named individuals and six specified addresses. You state that the department has released some of the information to the requestor. You claim that the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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 58.007 of the Family Code and former section 51.14 of the Family Code. You assert section 58.007 for a portion of the requested information. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. We note that section 58.007 is inapplicable in this instance because the conduct at issue occurred in 1994 and 1995. However, former section 51.14 of the Family Code is applicable to the requested information. Prior to its repeal by the Seventy-Fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police

¹We 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.

reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996 are governed by former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 only applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Incident reports 94-046416 and 95-065894 involve juvenile conduct that occurred in 1994 and 1995. Therefore, this information is confidential and must be withheld under former section 51.14 of the Family Code in conjunction with section 552.101 of the Government Code. *See id.* § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by a child).

Section 552.101 also encompasses section 261.201(a) of the Family Code, which 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 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)(1), (2). Upon review, we find that remaining information at issue was used or developed in investigations of alleged child abuse or neglect. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261); § 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"). Thus, we find that the information is within the scope of section 261.201 of the Family Code. 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 conclude that the remaining information is confidential under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code.

We note that section 261.201 provides that information encompassed by subsection (a) may be released to certain persons and entities under limited circumstances. *See* Fam. Code § 261.201. The department received the present request for information from a Court Appointed Special Advocate who may be the legal representative of the minor children involved in the requested information. However, the requestor does not fall within any

category of persons or entities authorized by section 261.201 to receive this ordinarily confidential information. *See id.* § 261.201(b)-(g) (listing entities that are authorized to receive 261.201 information). Accordingly, the remaining information at issue is confidential under section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.²

In summary, the department must withhold incident reports 94-046416 and 95-065894 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As our ruling is dispositive, we do not address your other argument against disclosure.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 341966

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that if the investigation underlying the requested information has been referred to the Texas Department of Family and Protective Services ("DFPS"), a legal representative of the child may be entitled to access to DFPS's records. *See* Fam. Code § 261.201(g).