



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2009

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

OR2009-15191

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# 359573.

The Plano Police Department (the "department") received a request for all records from a specified date range involving a particular address. You state that some responsive information has been released to the requestor. 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." Gov't Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Open Records Decision No. 680 at 4 (2004); *see also* Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"); 51.02(2) (defining "child" as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). 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). The information you have marked as Exhibit B consists of law enforcement records involving juvenile delinquent conduct that occurred after September 1, 1997. The department must withhold this information under section 552.101 in conjunction with section 58.007.

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

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). The information you have marked as Exhibit C consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation of child abuse under chapter 261 of the Family Code. *See* Fam. Code § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *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 the disabilities of minority removed for general purposes). Therefore, we find Exhibit C is generally confidential under section 261.201 of the Family Code.

We note, however, that the requestor may be a parent of one of the child victims listed in report number 2007-169493. Further, this individual is not alleged to have committed the suspected abuse. As it is not clear whether the requestor is a parent of a child victim for purposes of section 261.201(k), we must rule conditionally. If the requestor is not the parent of a child victim listed in report number 2007-169493, Exhibit C must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the parent of a child victim in this instance, the department may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k). We note, however, that section 261.201(l) provides that before a parent can copy and inspect a record of a child under 261.201(k), any personally identifiable information about a victim or witness under 18 years of age who is not the parent’s child and the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(1), (3). Accordingly, to the extent the requestor is the parent of a child victim, report number 2007-169493 must be provided to the requestor pursuant to section 261.201(k) of the Family Code; however, any personally identifiable information about a victim or witness under 18 years of age who is not the parent’s child and the identity of the reporting party must be withheld pursuant to section 261.201(l) of the Family Code. In that case, the remainder of Exhibit C must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

In summary, the department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If the requestor is not the parent of a child victim listed in report number 2007-169493, Exhibit C must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the parent of a child victim, report number 2007-169493 must be provided to the requestor pursuant to section 261.201(k) of the Family Code; however, any personally identifiable information about a victim or witness under 18 years of age who is not the parent's child and the identity of the reporting party must be withheld pursuant to section 261.201(l) of the Family Code. In that case, the remainder of Exhibit C must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 359573

Enc. Submitted documents

c: Requestor
(w/o enclosures)