



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2010

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

OR2010-01854

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# 369614.

The Plano Police Department (the "police department") received a request for an incident report involving a named individual that was filed several years ago. You claim the submitted report 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which 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 [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 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). We find the submitted incident report and Department of Family and Protective Services ("DFPS") intake report were used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); *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, the reports are generally confidential under section 261.201 of the Family Code. You do not indicate the police department or DFPS has adopted a rule governing the release of this type of information in this instance. Accordingly, we assume no such rule exists. We note, however, section 261.201(a) provides that information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *Id.* § 261.201(a). In this instance, section 58.007 of the Family Code may constitute "applicable state law" for purposes of section 261.201(a).

Section 58.007 of the Family Code provides in pertinent 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.

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by

Section 411.082, Government Code, the child, and the child's parent or guardian.

Id. § 58.007(c), (e). Section 58.007 makes confidential juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. We find the reports involve juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of Fam. Code § 58.007). Thus, the reports are subject to section 58.007. However, the requestor is a representative of the Joint Law Enforcement and Security Department of the Naval Air Station Joint Reserve Base in Fort Worth, Texas ("security department"). Section 58.007(e) gives a "criminal justice agency as . . . defined by Section 411.082, Government Code," a right of access to juvenile law enforcement records. A "criminal justice agency" is defined in part as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice." Gov't Code § 411.082(3)(A). "Administration of criminal justice" has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines "administration of criminal justice" as the "performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. Code Crim. Proc. art. 60.01(1). It appears the security department is a criminal justice agency as defined by section 411.082.

However, section 261.201(a) also requires that release be "for purposes consistent with the [Family Code]." Fam. Code § 261.201(a). Therefore, if you determine the security department does not intend to use the reports for purposes consistent with the Family Code, then the reports must be withheld in their entirety under section 261.201. However, if you determine the security department intends to use the reports for purposes consistent with the Family Code, then the security department has a statutory right of access to the reports under section 261.201. Although you raise common-law privacy and section 552.108 of the Government Code, a statutory right of access preempts both common law and general exceptions to disclosure under the Act. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet. h.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle), Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). Accordingly, if you determine the security department intends to use the reports for purposes consistent with the Family Code, then you must release the reports in their entirety to the security department.

In summary, if you determine the security department does not intend to use the reports for purposes consistent with the Family Code, then the reports must be withheld in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If you determine the security department intends to use the reports for

purposes consistent with the Family Code, then you must release the reports in their entirety to the security department.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 369614

Enc. Submitted documents

c: Requestor
(w/o enclosures)