



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 16, 2010

Ms. Delietrice Henry  
Open Records Assistant  
City of Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2010-03693

Dear Ms. Henry:

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# 373468.

The Plano Police Department (the "department") received a request for information pertaining to three specified incidents at a specified address. We understand you to assert that you do not maintain information pertaining to one of the incidents.<sup>1</sup> You claim the submitted 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.

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. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(a) Except as provided by Section 261.203, 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). We note incident report number 09-208137 relates to an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of “abuse” includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.011 as a person younger than 17 years of age). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Accordingly, we find the department must withhold incident report number 09-208137 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You raise section 552.108(a)(1) of the Government Code for incident report number 09-224248. You state you will withhold this report under section 552.108, as it relates to an ongoing criminal investigation, based upon the ruling in *Attorney General v. Plano Police Department*, No. GV-001919 (126th Dist., Travis County, Tex., December 18, 2000). However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We note basic information includes, among other things, the identity of the complainant and a detailed description of the offense, but does not include the identity of a victim or witnesses. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold incident report number 09-224248 in accordance with the ruling in *Attorney General v. Plano Police Department*.

We understand you to claim a portion of the basic information in incident report number 09-224248 is confidential pursuant to common-law privacy and constitutional privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident*

*Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. As noted above, the identities of victims and witnesses are not basic information. Upon review, we find that no portion of the basic information in incident report number 09-224248 is highly intimate or embarrassing and not of legitimate public interest. Thus, none of the basic information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985)). Upon review, we find the department has failed to demonstrate how any of the remaining information in incident report number 09-224248 falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Thus, no portion of the basic information in incident report number 09-224248 may be withheld under section 552.101 in conjunction with constitutional privacy.

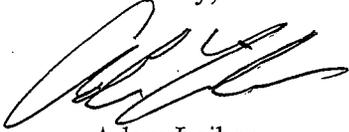
In summary, the department must withhold incident report number 09-208137 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold incident report number 09-224248 in accordance with the ruling in *Attorney General v. Plano Police 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](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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/eb

Ref: ID# 373468

Enc. Submitted documents

c: Requestor  
(w/o enclosure)