



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2011

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

OR2011-00735

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# 406057 (ORR# NORD102210).

The Plano Police Department (the "department") received a request for all incident reports and calls relating to the requestor's address during a specified period of time. You state you have released some of the requested information 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 information protected by other statutes, such as section 261.201(a) 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 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). You state that some of the submitted information was used or developed in an investigation of alleged child abuse or neglect. Based on your representations and our review of the information at issue, we agree that report number 2005-00176743 is subject to section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family 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). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the department must withhold report number 2005-00176743 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Section 58.007 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* Fam. Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). The relevant part 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 Subchapters B, D, and E.

Id. § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You assert the

remaining report involves juvenile conduct that is subject to section 58.007. However, upon review of report number 2006-00088936, we note that one of the suspects is listed as having an age range of 16-17, and we note the other suspect is 39 years old. As we are unable to determine the exact age of one of the suspects, we must rule conditionally. To the extent report number 2006-00088936 concerns a juvenile suspect who is ten years of age or older and under seventeen years of age, it is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, to the extent report number 2006-00088936 pertains to solely to suspects who are not ten years of age or older and under seventeen years of age, it is not confidential under section 58.007, and the department may not withhold it under section 552.101. In that case, we will consider whether this report may be withheld under any other exception to disclosure.

We note report number 2006-00088936 contains information subject to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release.¹ Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the Texas driver's license number we have marked under section 552.130.²

In summary, the department must withhold report number 2005-00176743 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent report number 2006-00088936 concerns a juvenile suspect who is ten years of age or older and under seventeen years of age, the department must withhold it under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. To the extent report number 2006-00088936 pertains to solely to suspects who are not ten years of age or older and under seventeen years of age, the department must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code, and the remaining information must be released.³

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information being released contains the requestor's driver's license number to which she has a special right of access. *See* Gov't Code § 552.023(a). Accordingly, if the department receives another request for this information from an individual other than one with a right of access under section 552.023, the department is authorized pursuant to Open Records Decision No. 684 to withhold the requestor's Texas driver's license number under section 552.130 without the necessity of requesting an attorney general decision.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/vb

Ref: ID# 406057

Enc. Submitted documents

c: Requestor
(w/o enclosures)