



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2011

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

OR2011-07445

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# 418845 (MALP030811).

The Plano Police Department (the "department") received a request for all information related to a specified incident. You state you have released basic information to the requestor. You also state the department will withhold some of the requested information based upon a previous determination for withholding information under section 552.108(a)(1) of the Government Code granted by the ruling in *Office of the Attorney General v. Plano Police Department*, No. GV-001919 (126th Dist. Ct., Travis County, Tex., December 18, 2000). You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the claimed exceptions 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. This exception encompasses information made confidential by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

¹ Although you do not raise section 552.130 of the Government Code in your brief, you have marked portions of the submitted information under this exception. Thus we understand you to raise section 552.130.

(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). Upon review, we agree report 2010-00213641 (Exhibit C) constitutes files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261. *See id.* § 261.001(1)(E) (“abuse” for purposes of chapter 261 of the Family Code includes indecency with a child under section 21.11 of the Penal Code); Penal Code § 21.11(a) (defining “child” for purposes of Penal Code section 22.11 as a person younger than 17 years of age). Therefore, this report is within the scope of section 261.201. You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude Exhibit C is confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, reports 2010-00213885 (Exhibit B) and 2010-00215026 (Exhibit D) pertain respectively to a theft investigation and a welfare check on an adult. We find you have failed to show how these two reports were used or developed in an investigation under chapter 261. Therefore, no portion of Exhibit B or D may be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information, Exhibits B and D, both pertain to a pending criminal prosecution. Based on your representation and our review, we conclude release of the remaining information in these exhibits would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that

are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the remaining information in Exhibits B and D may be withheld under section 552.108(a)(1).²

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/bs

Ref: ID # 418845

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² Because our ruling as to Exhibits B and D is dispositive, we do not address your remaining arguments against disclosure of portions of this information.