ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2011

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

OR2011-09676

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# 423027 (Tracking # EDWK0413/2111).

The Plano Police Department (the "department") received two requests from the same requestor for (1) information pertaining to events occurring on March 28, 2011, March 29, 2011, and April 11, 2011 involving a named individual and (2) a specified report involving another named individual. You indicate the department will withhold all but basic information from report numbers 2011-00060695 and 2011-00065840 based upon a previous determination for withholding information under section 552.108(a)(1) granted to the department 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). *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records No. 127 (1976) (summarizing types of information considered to be basic information). You claim the remaining requested 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.

Initially, we note you have not submitted any information responsive to the request for information pertaining to events occurring on March 28, 2011. We assume, to the extent any

information responsive to this portion of the request existed when the department received the request for information, you have released this information to the requestor. If not, then you must do so at that time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 663 (2000).

Next, we must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). You state the department received the first request on April 13, 2011. Therefore, the ten-business-day deadline for the first request was April 27, 2011. The department's request for a ruling from this office for the first request was postmarked April 28, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department failed to comply with the procedural requirements of section 552.301 for report number 2011-00051951 and the basic information of report number 2011-00060695.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the department's arguments under this section for report number 2011-00051951 and the basic information of report number 2011-00060695. We will also consider your argument under section 552.101 of the Government Code for the basic information of report number 2011-00065840.

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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. The relevant language of section 58.007 provides:

> (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:
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> > (1) if maintained on paper or microfilm, kept separate from adult files and records;
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> > (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.
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> . . .
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> (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.
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> . . .
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> (j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:
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> > . . .
> >
> > (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j)(2). 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 at the time of the reported conduct. *See id.* § 51.02(2)(A). Report number 2011-00051951 and the basic information of report numbers 2011-00060695 and 2011-00065840 constitute law enforcement records relating to juveniles allegedly engaged in delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining "delinquent conduct" for the purposes of section 58.007). Accordingly, report number 2011-00051951 and the basic information of report numbers 2011-00060695 and 2011-00065840 would ordinarily be confidential

pursuant to section 58.007 of the Family Code. However, you inform us that the requestor is the foster parent of the juvenile offenders listed in this information, and, as such, has a right to inspect or copy law enforcement records concerning his own children. *See id.* § 58.007(e). As such, the requestor has a right of access to report number 2011-00051951 and the basic information of report numbers 2011-00060695 and 2011-00065840. Section 58.007(j) provides, however, that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Accordingly, we will address your arguments under section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy for report number 2011-00051951.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). You assert report number 2011-00051951 is subject to common-law privacy. We note, however, the requestor is the foster parent of the child whose privacy rights are at issue in report number 2011-00051951 and, therefore, has a special right of access to information that would ordinarily be withheld to protect the child's privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Accordingly, the department may not withhold any portion of report number 2011-00051951 from this requestor under section 552.101 in conjunction with common-law privacy.[1]

As you raise no further exceptions to disclosure, the department must release report number 2011-00051951 and the basic information of report numbers 2011-00060695 and 2011-00065840 to the requestor pursuant to section 58.007(e) of the Government Code.[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,

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[1]Although you also contend report number 2011-00051951 is protected under constitutional privacy, we note the requestor has the same right of access, pursuant to section 552.023(b) of the Government Code, to any information subject to constitutional privacy.

[2]Because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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,

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bs

Ref: ID# 423027

Enc. Submitted documents

c: Requestor
(w/o enclosures)