



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 28, 2011

Mr. B. Chase Griffith  
For the City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2011-17413

Dear Mr. Griffith:

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# 437172 (McKinney ORR # 10-4352).

The McKinney Police Department (the "department"), which you represent, received a request for a specified restraining order, and all information pertaining to a named individual. You state you have released two responsive call reports to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have not submitted any information responsive to the request for a specified restraining order. You provide no indication that information responsive to the request exists or that the department seeks to withhold responsive information. To the extent information responsive to this portion of the request exists, we presume the department has released it. If not, the department must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

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<sup>1</sup>Although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Accordingly, we find the department has waived its claim under this exception. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 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). The relevant portion of section 58.007 states:

(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.

...

(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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

*Id.* § 58.007(c), (e), (j). Report 2011-048204 involves a child engaged in conduct indicating a need for supervision that occurred after September 1, 1997; therefore, this report is subject

to section 58.007. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). However, the submitted information reveals that the requestor is a parent of the juvenile suspect listed in report 2011-048204. Under section 58.007(e), the requestor has a right to inspect or copy law enforcement records pertaining to her child. *See id.* § 58.007(e). Therefore, report 2011-048204 may not be withheld under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides:

(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 report 2011-044577 is confidential under section 261.201 of the Family Code. Upon review, we find that although report 2011-044577 pertains to a welfare concern call, you have failed to demonstrate, and the report does not reflect, that the incident report relates to a report or investigation of alleged child abuse or neglect under section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); Gov’t Code § 552.301(e)(1)(A) (stating a governmental body must explain how claimed exception to disclosure applies). Accordingly, report 2011-044577 may not be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We note the submitted information contains motor vehicle record information subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 excepts from public disclosure information relating to a driver’s license or motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130). Therefore, the department must withhold the license plate numbers we have marked under section 552.130.

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<sup>2</sup>The 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).

As you raise no further exceptions to disclosure, the remaining information must be released.<sup>3</sup>

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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/em

Ref: ID# 437172

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note that the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.