



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 13, 2012

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

OR2012-09111

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# 456325 (Plano Tracking #EEDW032312).

The Plano Police Department (the "department") received a request for a specified offense report. You state you have referred the requestor to the Plano Municipal Judge's Office for a portion of the requested information.<sup>1</sup> You claim 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 representative sample of information.<sup>2</sup>

Initially, you acknowledge, and we agree, the department did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption

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<sup>1</sup>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).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See 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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the department's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your arguments under that exception.

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. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. *See* Open Records Decision No. 181 (1977) (concluding former section 51.14(d) of Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Former section 51.14(d) was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Former section 51.14 provided, in relevant part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14 (repealed 1995). Section 51.14 applies to records of a “child,” which is defined as a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The submitted report involves a fifteen-year-old child suspected of sexual assault in 1989. Thus, the report is a record of juvenile delinquent conduct that occurred prior to January 1, 1996. *See id.* § 51.03 (defining “delinquent conduct”). The exceptions

to former section 51.14(d) do not apply to this requestor. Accordingly, we conclude the submitted report is confidential under former section 51.14 of the Family Code.<sup>3</sup>

In this instance, the requestor is an investigator with the Texas Department of Licensing and Regulation (the "TDLR"). We note sections 411.093 and 411.122 of the Government Code both provide that the TDLR is entitled to obtain criminal history record information ("CHRI") maintained by the Texas Department of Public Safety ("DPS") that relates to a person who is an applicant for a license issued by the TDLR. Gov't Code §§ 411.093(a), .122(a)(1), .122(d)(10). Furthermore, section 411.087 of the Government Code provides an agency that is entitled to obtain CHRI from DPS is also authorized to "obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]" *Id.* § 411.087(a)(2). CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2). Thus, when read together, sections 411.087, 411.093, and 411.122 of the Government Code may grant the TDLR a right of access to CHRI in the submitted information. In this instance, the requestor states the information he is seeking relates to an applicant for a license issued by the TDLR. Therefore, pursuant to sections 411.087, 411.093, and 411.122 of the Government Code, the requestor is authorized to obtain CHRI from the department. However, we must address the conflict between former section 51.14(d) of the Family Code and sections 411.087, 411.093, and 411.122 of the Government Code.

Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the general provision is the later enactment and the manifest intent is that the general provision prevail); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App.1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, although former section 51.14(d) generally makes juvenile law enforcement records confidential, sections 411.093 and 411.122, in concert with section 411.087, of the Government Code give one specific requestor, the TDLR, access to particular information, CHRI, found in records involving particular individuals, applicants for a license issued by the TDLR. *See* Gov't Code §§ 411.087, .093(a), .122(a)(1), .122(d)(10); Fam. Code § 51.14. Thus, the statutory right of access granted to the TDLR by sections 411.087, 411.093, and 411.122 of the Government Code prevails over the more general confidentiality provision of former section 51.14(d) of the Family Code. Therefore, pursuant to sections 411.087, 411.093, and 411.122 of the Government Code, the department must release to this requestor information that shows the types of allegations made and

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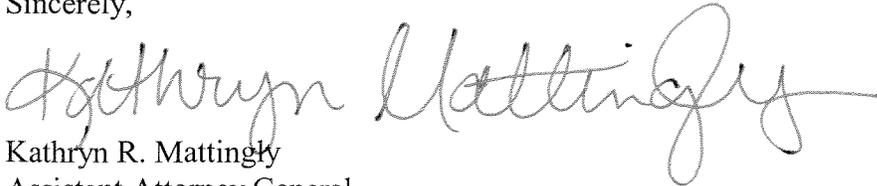
<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. The department must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.

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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/dls

Ref: ID# 456325

Enc. Submitted documents

c: Requestor  
(w/o enclosures)