



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2012

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

OR2012-13616

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# 463434 (Plano ORR # LONR060612).

The Plano Police Department (the "department") received a request for information pertaining to a named individual at a specified address for a specified time period, including a call pertaining to a specified incident.¹ You claim that the submitted information is exempted 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 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes such as section 58.007 of the Family Code, which provides in pertinent part 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,

¹You state the department received clarification of the request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

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.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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 conduct. *See id.* § 51.02(2). We note section 58.007(c) is not applicable to information that relates to a juvenile as only a complainant, victim, witness, or other involved party and not as a suspect or offender. Upon review, we find reports 2011-159784 and 2012-71581 involve a child engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.007(c). It does not appear that any of the exceptions to confidentiality under section 58.007 apply to these reports. Accordingly, the department must withhold reports 2011-159784 and 2012-71581 in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.² However, we find none of the remaining reports identify a juvenile suspect or offender for the purposes of section 58.007. Accordingly, we find the department has not demonstrated the applicability of section 58.007(c) to this information; thus, the department may not withhold any of the remaining information under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy,

²As our ruling is dispositive, we need to address your remaining argument against disclosure of these reports.

both prongs of this test must be established. *Id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

The remaining reports contain information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, report 2010-141365 reveals the requestor knows the identity of the individual involved as well as the nature of the information in this report. Therefore, withholding only the individual's identity or certain details of this incident from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold report 2010-141365 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Although we understand you to seek to withhold reports 2010-153499 and 2012-59740 in their entirety, you have not demonstrated, nor does it otherwise appear, these are situations in which the reports must be withheld in their entirety on the basis of common-law privacy. However, we note portions of the remaining reports are highly intimate or embarrassing and of no legitimate public concern. Therefore, the department must withhold the information we have marked in reports 2010-153499 and 2012-59740 under section 552.101 of the Government Code in conjunction with common-law privacy. We find you have failed to demonstrate that any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold reports 2011-159784 and 2012-71581 in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold report 2010-141365 in its entirety and the information we have marked in reports 2010-153499 and 2012-59740 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 463434

Enc. Submitted documents

c: Requestor
(w/o enclosures)