



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2013

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

OR2013-14466

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# 496690 (PPD ORR No. HAIJ052013).

The Plano Police Department (the "department") received a request for information pertaining to a crime that occurred on a specified date. We understand you have released some information to the requestor with redactions made pursuant to section 552.130(c) and section 552.136(c) of the Government Code.¹ You claim portions of the submitted information are 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 must address the department's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e). Section 552.136 of the Government Code permits a governmental body to redact the information described in section 552.136(b) without the necessity of requesting a decision from this office. *See id.* § 552.136(c)-(e) (providing procedures for redaction of information).

a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). You state the request for information was received on May 20, 2013. You inform us May 27, 2013, was a holiday for the department. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Thus, the department's ten-business-day deadline to request a ruling was June 4, 2013. However, the envelope in which the department submitted its request for a ruling bears a postmark of June 11, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the department failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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); 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. *See* Open Records Decision No. 150 at 2 (1977). Some of the submitted information is subject to section 552.101 and section 552.130 of the Government Code.² Because section 552.101 and section 552.130 can provide compelling reasons to withhold information, we will address the applicability of these sections to 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. Section 552.101 encompasses section 58.007 and former section 51.14 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). Although you raise section 58.007, we note this section is inapplicable in this instance because the conduct at issue occurred in 1989.

You also raise former section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to conduct

²The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

occurring before January 1, 1996, are governed by former section 51.14(d), which 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. 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* Fam. Code § 51.02(2). Former section 51.14 provided in relevant part as follows:

(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). Upon review, we find the submitted information does not pertain to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision for purposes of section 51.14. Consequently, the submitted information is not made confidential under former section 51.14(d) of the Family Code and may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the common-law right to 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, both prongs of this test must be met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Additionally, this office has found common-law privacy generally protects the identifying information of juvenile offenders and juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code §§ 51.14, 261.201. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate

public interest. Therefore, the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the driver's license information we have marked under section 552.130 of the Government Code. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 496690

Enc. Submitted documents

c: Requestor
(w/o enclosures)