



January 29, 2015

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

OR2015-01797

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# 551916 (Plano ORR #SMIJ103014).

The Plano Police Department (the "department") received a request for a specified incident report and all reports pertaining to two specified addresses during specified periods of time. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed 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 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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). Upon review, we find the information in Exhibit E was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the department must withhold the submitted information in Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.007 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), which reads 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, 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.

Id. § 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 when the conduct occurred. *See id.* § 51.02(2). Upon review, we find Exhibit C consists of a law enforcement record that involves alleged juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). We have no indication any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find the department must withhold Exhibit C in its entirety under section 552.101 of the

Government Code in conjunction with section 58.007(c) of the Family Code. Additionally, the information in Exhibit B involves alleged delinquent conduct that occurred after September 1, 1997. However, we are unable to determine the age of the offender at issue in Exhibit B. Accordingly, we must rule conditionally. We have no indication any of the exceptions in section 58.007 apply to this information. Thus, to the extent the offender at issue was ten years of age or older and under seventeen years of age at the time the conduct occurred, Exhibit B is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, if the information at issue pertains to an offender who was under ten years of age or seventeen years of age or older at the time the conduct occurred, Exhibit B may not be withheld under section 552.101 in conjunction with section 58.007(c) of the Family Code. In that situation, we will determine whether the information at issue is otherwise excepted from disclosure.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, the doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find some of the information in Exhibit D satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.¹

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

¹As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

prosecution of crime . . . if: . . . (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state the information you have marked in Exhibit B pertains to a criminal investigation conducted by the department that concluded in a result other than conviction or deferred adjudication. Based on your representation, we conclude the district may withhold the information you have marked in Exhibit B under section 552.108(a)(2).

Upon review, we find some of the remaining information in Exhibit B is subject to section 552.130 of the Government Code.² Section 552.130 of the Government Code exempts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country. *See* Gov’t Code. § 552.130(a)(1). The department must withhold the driver’s license information we have marked in Exhibit B under section 552.130 of the Government Code.

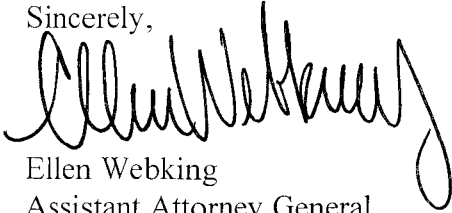
In summary, the department must withhold Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold Exhibit C in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. If the offender in Exhibit B was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the department must withhold the information in Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the offender at issue was under ten years of age or seventeen years of age or older at the time of the conduct, then the department may withhold the information you have marked in Exhibit B under section 552.108(a)(2) of the Government Code and must withhold the information we have marked in Exhibit B under section 552.130 of the Government Code. The department must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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.

²The 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).

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID#551916

Enc. Submitted documents

c: Requestor
(w/o enclosures)