



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1995

Mr. G. Mike Davis
State Fire Marshal
Texas Commission on Fire Protection
P.O. Box 2286
Austin, Texas 78768-2286

OR95-251

Dear Mr. Davis:

You ask whether information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 28617.

The Texas Commission on Fire Protection (the "commission") received an open records request for a copy of the report regarding the investigation of a particular fire. You contend that section 552.101 of the Government Code in conjunction with section 51.14(d) of the Family Code arguably excepts the requested information from disclosure. You also contend that section 552.108 excepts from disclosure all the requested information except for the synopsis investigation report.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section incorporates confidentiality statutes into the Open Records Act. Section 51.14(d) provides, in pertinent part, as follows:

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

However, section 51.14 is part of title 3 of the Family Code, which deals with delinquent children and children in need of supervision. Thus, section 51.14 applies to law enforcement records regarding a child who is subject to a proceeding under title 3.

We have examined the information submitted for review and conclude that it does not fall within section 51.14. As far as we can determine, the documents are not law enforcement records relating to a child who is subject to a proceeding under title 3 of the Family Code. Although the records identify an individual as a juvenile, neither they nor you have indicated that the individual is a child for purposes of title 3. See Fam. Code § 51.02(1) (defining "child" for purposes of title 3). Furthermore, you have indicated that the investigator does not consider the individual a prime suspect. Given these circumstances, we do not believe that section 51.14 protects all the requested documents.

Section 552.108 of the Government Code provides as follows:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how its release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)).

You have established that the requested records relate to a case still under active investigation. Therefore, you may withhold under section 552.108 of the Government Code all the requested information except for the information generally found on the first page of the offense report.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/rho

Ref.: ID# 28617

Enclosures: Submitted documents

cc: Mr. Curtis Roberts
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(w/o enclosures)