



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1996

Ms. Suzanne H. Burgess
Legal Assistant
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR96-0102

Dear Ms. Burgess:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37792.

The Texas Alcoholic Beverage Commission (the "commission") received a request for an investigation report concerning a November 11, 1994 traffic accident in Hood County. You state that the commission has released the requested information except for the identities of the individuals who were killed in the accident and individuals who gave statements to the police. You contend that the identities of the minors may be excepted from required public disclosure by constitutional privacy. You cite Open Records Decision No. 628 (1994).

However, the right of privacy lapses upon death. Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision Nos. 272 (1981), 216 (1978). Thus, there is no privacy interest concerning information about the accident victims. We will next consider the privacy of the individuals who gave statements to the police.

For information to be protected from public disclosure under the common-law right of privacy, the information must contain highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person *and* the information must not be of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

The constitutional right to privacy consists of two related interests: (1) the individual interest in independence in making certain kinds of important decisions, and (2) the individual interest in independence in avoiding disclosure of personal matters. The first interest applies to the traditional "zones of privacy:" marriage, procreation, contraception, family relationships, and child rearing and education. *Paul v. Davis*, 424 U.S. 693 (1976); *Roe v. Wade*, 410 U.S. 113 (1973). The "zones of privacy" are not implicated by the requested information. The second interest, in nondisclosure or confidentiality, relates to information that concerns the "most intimate aspects of human affairs." See Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)).

We have reviewed the information submitted for our consideration. The requested information does not concern the "most intimate aspects of human affairs," nor is the information highly intimate and embarrassing. Accordingly, you may not withhold the identities of the individuals who gave statements to the police under constitutional or common-law privacy.

We note, however, that one of the individuals is a juvenile, who appears to have been charged with criminal offenses. The release of law enforcement records of offenses committed by a juvenile before January 1, 1996 is governed by former Family Code section 51.14(d),¹ which provides, in pertinent 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 [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.

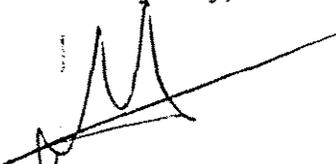
Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, repealed by Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. In Open Records Decision No. 181 (1977) at 2, this office held that former section 51.14(d) excepts police reports which identify juveniles or furnish a basis for their identification. See also Open Records Decision No. 394 (1983) at 4-5 (applying former Fam. Code § 51.14(d) to "police blotter" and related information). You do not indicate that the offense reports at issue here relate to charges for which the city

¹The Family Code was substantially amended by the Seventy-fourth Legislature including repealing section 51.14. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. However, the amendments to the Family Code apply only to conduct that occurs on or after January 1, 1996. *Id.* § 106, 1995 Tex. Sess. Law Serv. at 2591. "Conduct that occurs before January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose." *Id.* The requested information concerns conduct that occurred before January 1, 1996.

transferred the juvenile under section 54.02 of the Family Code² to a criminal court for prosecution, nor that article 15.27 of the Code of Criminal Procedure³ applies. Moreover, we do not understand any of the exceptions to former section 51.14(d) to apply here. See Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (former Fam. Code § 51.14(d)(1), (2), (3)). Accordingly, we conclude that the commission must withhold the law enforcement records concerning this juvenile.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/LBC/rho

Ref: ID# 37792

Enclosures: Submitted documents

cc: Mr. Edwin J. Seilheimer
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(w/o enclosures)

²Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476-77, amended by Act of May 19, 1975, 64th Leg., R.S., ch. 693, §§ 15-16, 1975 Tex. Gen. Laws 2152, 2156-57 (adding subsecs. (m), (j), (k), (l)), amended by Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen. Laws 309 (amending subsecs. (a), (h), (j)).

³Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.