



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 6, 1997

Mr. Lou Bright  
General Counsel  
Texas Alcoholic Beverage Commission  
P. O. Box 13127  
Austin, Texas 78711-3127

OR97-0020

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102804.

The Texas Alcoholic Beverage Commission (the "commission") received a request from a certain named individual's attorney for "all police records including offense and arrest reports, search and arrest warrants and affidavits, statements made by [the certain named individual], and other related police reports . . . for the offense of Possession of Marijuana allegedly committed on Nov. 17, 1995." You have released to the requestor some information responsive to the request. However, you assert that portions of the requested information are excepted from required public disclosure pursuant to section 552.101 of the Government Code. Further, you also inform us that the requested information pertains to pending criminal proceedings in Collin County against the requestor's client. Therefore, you assert that the requested information is excepted from required public disclosure based on section 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your assertion that section 552.101 of the Government Code excepts portions of the submitted information from required public disclosure. You assert that portions of the requested records that identify juvenile offenders are excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. 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),<sup>1</sup> which provides, in pertinent part:

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<sup>1</sup>The Family Code was substantially amended by the Seventy-fourth Legislature including the repeal of 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

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.<sup>2</sup>

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 information at issue here relates to charges for which the juvenile was transferred to a criminal court for prosecution under section 54.02 of the Family Code,<sup>3</sup> nor that article 15.27 of the Code of Criminal Procedure<sup>4</sup> applies. Moreover, we do not understand any of the exceptions to former section 51.14(d) to apply here.<sup>5</sup> Accordingly, we conclude that the commission must withhold the portions of the requested information that identify a juvenile offender, other than the requestor's client, pursuant to section 552.101 as information deemed confidential by law.<sup>6</sup>

Additionally, we note that CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is deemed confidential by federal and state law. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI

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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.

<sup>2</sup>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.

<sup>3</sup>Act 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)).

<sup>4</sup>Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.

<sup>5</sup>*See id.* § 3, 1993 Tex. Gen. Laws at 1852 (repealed 1995) (former Fam. Code § 51.14(d)(1), (2), (3)).

<sup>6</sup>Section 552.023 of the Gov't Code grants an individual or an individual's representative a special right of access to information that is otherwise excepted from required public disclosure based on a law that protects that individual's privacy interests. *See* Open Records Decision Nos. 587 (1991), 481 (1987) at 4.

generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas DPS or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. Therefore, the department must withhold any CHRI from the requestor.

We next address your assertion that section 552.103 of the Government Code exempts some information from required public disclosure. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding or settlement negotiations. Open Records Decision No. 551 (1990). You have provided us with a letter from an Assistant Criminal District Attorney for Collin County, which states that certain records should not be released, because they relate to pending criminal litigation to which the state is a party. In this instance you have made the requisite showing that the requested information is exempted under section 552.103(a); the requested records may, therefore, be withheld.<sup>7</sup>

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a).

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,

  
Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/cbh

Ref: ID# 102804

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<sup>7</sup>We note that section 552.103(a) cannot be invoked to withhold from public disclosure basic front page offense report information that has already been made available to defendant in criminal litigation. Open Records Decision No. 597 (1991).

Enclosures: Submitted documents

cc: Mr. Paul G. Stuckle  
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(w/o enclosures)