



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1997

Ms. Stephanie F. Lippard
Legal Assistant to Elizabeth Elam
Fielding, Barrett & Taylor, L.L.P.
3400 Bank One Tower
500 Throckmorton Street
Fort Worth, Texas 76102-3821

OR97-1233

Dear Ms. Lippard:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106016.

The City of Burleson (the "city"), which your office represents, received a request for "criminal record information and any other information involving police" concerning two named individuals. In response to the request, you submitted to this office for review a copy of the records, which you assert are responsive. You state that the city has released all information responsive to the request which is not excepted from required public disclosure. However, you assert that the remaining submitted information may be withheld from disclosure pursuant to sections 552.101¹ and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses both common-law and constitutional privacy, as well as information protected by other statutes. We note that the common-law right of privacy under section 552.101 may be applicable for some of these records. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must

¹We note that in your letter to our office you asserted that the submitted information is excepted from disclosure pursuant to sections 261.201 and 58.101 of the Family Code.

meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. In *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the U.S. Supreme Court concluded that where an individual's criminal history is compiled or summarized by a governmental entity, the information takes on a character that implicates individual's right of privacy in a manner that the same individual records in an uncompiled state do not. The request for all police department records on a particular individual is a request for that individual's criminal history. Responding to the request would require the police department to compile the individual's criminal history. Therefore, to the extent the requested records might constitute a compilation of individual's criminal history record information, they must be withheld from disclosure under section 552.101 of the Government Code in conjunction with the common-law right of privacy.

As for the remaining submitted records, we note that some of the requested records contain information that is confidential and excepted from disclosure under section 552.101, in conjunction with section 261.201(a) of the Family Code which reads as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, 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;

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Among the information submitted to our office, you have enclosed a record which consists of "reports, records, communications, and working papers used or developed" in an investigation conducted under chapter 261 of the Family Code. We believe subsection (a) is applicable to these particular submitted records. Because you have not cited any specific rule that the department has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the submitted record is

confidential pursuant to section 261.201 of the Family Code. See Open Records Decision No. 440 (1986) at 2 (predecessor statute). Consequently, since the submitted record is confidential by statute, the department must withhold the requested information pursuant to section 261.201(a) of the Family Code, in conjunction with section 552.101 of the Government Code.

Finally, as for those records which are not excepted from required disclosure pursuant to section 552.101, we must consider your other claimed exception. Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n 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.” Gov’t Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). You assert that the requested information relates to police investigation or prosecution of criminal allegations. Since the remaining records at issue come within the purview of section 552.108, we conclude that most of the information may be withheld under this section.

We note, however, that information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public.² *Houston Chronicle Publ’g 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). Thus, the city must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the report. Therefore, except for front page offense report information, section 552.108 of the Government Code excepts the requested record from required public disclosure.³ Although section 552.108 authorizes the city to withhold the remaining information from disclosure, the city may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov’t Code § 552.007.

As we conclude that the city must withhold much of the requested information based on section 552.108 and section 261.201(a) of the Family Code, we need not consider your

²The content of the information determines whether it must be released in compliance with Houston Chronicle, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by Houston Chronicle.

³We note that in Open Records Decision No. 127 (1976), this office concluded that an “officer’s speculation as to a suspect’s guilt” and “the identification and description of witnesses” is information which is protected by section 552.108 of the Government Code.

other claim.⁴ 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 106016

Enclosures: Submitted documents

cc: Mr. Brent Smith
344-J SW Wilshire
Burleson, Texas 76028
(w/o enclosures)

⁴We note that although you claimed section 58.101 of the Family Code as an applicable statute, based on the submissions we believe that you meant to assert section 58.007. The Seventy-fourth Legislature replaced section 51.14(d) concerning juvenile criminal records with section 58.007 of the Family Code. Section 58.007 applies only to conduct occurring on or after January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Gen. Laws 2517, 2591. *See generally* Open Records Decision No. 644 (1996). For your information, we note that 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).