



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 22, 1997

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR97-2106

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108761.

The El Paso Police Department (the "department") received two separate unrelated open records requests for police reports pertaining to incidents in which juvenile suspects were arrested. You contend that most of the requested reports are excepted from required public disclosure pursuant to section 552.108 of the Government Code. You also contend that the release of identities of the juvenile suspects would implicate those juveniles' privacy interests and that the department therefore must withhold the juveniles' identities pursuant to section 552.101 of the Government Code.

Section 552.108 of the Government Code, as amended by the 75th Legislature, excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(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; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(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 . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You explain that both of the requested police reports pertain to instances in which the juvenile suspects have been placed in a “first offender program” and that the juveniles are currently working toward completion of the program. You further explain that

under Section 52.31(j), Family Code, a juvenile who fails to complete a first offender program shall be referred to the juvenile court for further proceedings in the juvenile court. As it is unknown whether the juveniles in question will or will not complete the first offender program, it is the city’s position that these investigations are still pending, as the potential for referral to the juvenile court still exists.

As a result, we submit that the supplemental reports in both cases are exempt from disclosure under Section 552.108, Gov't Code.

Given the circumstances as you have described them, we agree that the records at issue currently pertain to open investigations by the department. We therefore conclude that the release of the supplemental police reports at this time could interfere with law enforcement or prosecution. The department may withhold both of the supplemental reports¹ in their entirety at this time pursuant to section 552.108, with the following exception.

Section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Both of the supplemental reports contain "basic" "front page offense report information" that is not otherwise contained in the requested incident reports, *i.e.*, the identities of the arrested individuals and details of the respective arrests. *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). We therefore must determine whether these categories of information are otherwise excepted from required public disclosure.

You contend that the information pertaining to the arrested juvenile suspects is protected from public disclosure pursuant to section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We note at the outset that the juvenile information is not made confidential by statutory law. Prior to its repeal by the 74th Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records, and law-enforcement records pertaining to conduct occurring before January 1, 1996, are governed by the former section 51.14(d), which was continued in effect for that purpose. This office has concluded, however, that section 58.007 of the Family Code, as enacted by the 74th Legislature, did not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. Open Records Decision No. 644 (1996). Although the 75th Legislature amended section 58.007 to once again make juvenile law-enforcement records confidential, effective September 1, 1997, it chose not to make this most recent amendment retroactive in application. Consequently, law-enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, are not subject to the confidentiality provisions of either section 51.14(d) or section 58.007 of the Family Code.

You note, however, that section 58.001(c) of the Family Code requires the destruction of juvenile law-enforcement records upon the juvenile's successful completion

¹Because you do not contend that any portion of the accompanying incident reports are excepted from public disclosure, we assume the department has made these records available to the respective requestors. If it has not, these records must be released at this time. *See* Gov't Code § 552.301-.302.

of the first offender program. This office has acknowledged that this provision balances the law-enforcement interest in this information with the privacy interests of the juvenile suspect. *See* Attorney General Opinion DM-435 (1997) at 4. You therefore contend that information contained in the supplemental reports that identifies the juvenile suspects should similarly be withheld from the public on privacy grounds.

As a general rule, statutory confidentiality, even that which is intended to protect privacy interests, requires express language making particular information confidential. *See* Open Records Decision No. 478 (1987). Because there is no express statutory language that pertains to the records at issue prior to the time, if any, for their destruction, such confidentiality cannot be inferred from other sections of the Family Code. The section 58.001(c) provision requiring the destruction of the juvenile records establishes a statutory privacy interest in the information only upon the juvenile's completion of the first offender program. The department therefore may not in this instance withhold the "basic" front page offense report information contained in the supplemental report pursuant to either section 552.101 or 552.108.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/RWP/rho

Ref.: ID# 108761

Enclosures: Submitted documents

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