



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1998

Mr. John Steiner
Division Chief
City of Austin
Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR98-0520

Dear Mr. Steiner:

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# 112797.

The Austin Police Department (the "department") received a request for all documents relating to a specific criminal investigation concerning allegations of excessive force. You have submitted a copy of an incident report for our review. You state that front page information has been released to the requestor. However, you claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (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. . . .

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you have not stated that the requested information pertains to a pending criminal investigation or prosecution so as to demonstrate that its release would interfere with the detection, investigation, or prosecution of crime. Nor have you demonstrated that the requested information relates to a criminal investigation that *concluded in a result* other than a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2), (b)(2). Therefore, we conclude that the requested information may not be withheld under section 552.108.

However, we note that some of the information in this case is excepted from disclosure under section 552.101. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Although section 51.14(d) of the Family Code was repealed by the Seventy-fourth Legislature, Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590 (current version at Family Code §§ 58.007 *et seq.*), the repealing bill provides that "[c]onduct 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.* § 106, 1995 Tex. Gen. Laws at 2591; Open Records Decision No. 644 (1996) at 5. It appears that the requested information includes records which involve juvenile offenders and concerns conduct that occurred before January 1, 1996.

At the time the conduct occurred, the applicable law in effect was Family Code section 51.14 which provided, in pertinent part:

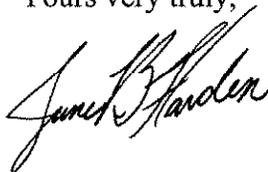
(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to 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. Gen. Laws 2517, 2590. In Open Records Decision No. 181 (1977) at 2, this office held that former section 51.14(d) excepted police reports which identified juvenile suspects or furnished 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

transferred the juveniles under section 54.02 of the Family Code¹ to a criminal court for prosecution, or that article 15.27 of the Code of Criminal Procedure² applies. Moreover, none of the exceptions to former section 51.14(d) apply to the requestor. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Family Code section 51.14(d)(1), (2), (3)). Accordingly, we conclude that the department must withhold any information which identifies juveniles or furnishes a basis for their identification under section 552.101 of the Government Code.

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/rho

Ref.: ID# 112797

Enclosures: Submitted documents

cc: Ms. Glenda L. Pittman
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1502 West Sixth Street
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(w/o enclosures)

¹Act 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 subsections (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 subsections (a), (h), (j)).

²Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.