



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 13, 1998

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR98-0702

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113247.

The Travis County District Attorney received a request for all records pertaining to cause numbers 95-1680 and 95-1681. The requestor also seeks the records of a named individual. You state that you have released 23 responsive pages of information to the requestor. You claim that the remaining information is excepted from required public disclosure by sections 552.101, 552.108, 552.111 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue. You have labeled the documents as exhibits A through F.

We first point out that exhibit C may contain information governed by provisions outside the Open Records Act. Chapter 611 of the Health and Safety Code provides for the confidentiality of mental health records created or maintained by a mental health professional. Section 611.002 provides in relevant part as follows:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. You may release these records only as provided by the statute. Health & Safety Code §§ 611.004, .0045; *see* Open Records Decision No. 565 (1990).

You argue that Exhibits A through F are protected from disclosure under section 552.108(a)(3). Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

* * * *

(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.

* * * *

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You explain that the cases which are the subject of this request were prosecuted and resulted in convictions. You argue that

[a]ll the information in the attached Exhibits:

- 1) Was prepared or gathered by the prosecuting attorney, investigators, paralegals, or other staff personnel, in anticipation of or in the course of preparing for criminal litigation; or
- 2) Reflects the mental impressions or legal reasoning of the prosecuting attorney.

All the information in the attached Exhibits reflects the mental reflections or legal reasoning of the prosecuting attorney handling this case, in that such documents indicate what facts, law and evidence the prosecuting attorney thought was important in this case. As information prepared in anticipation of or in the course of preparing for criminal litigation or as information reflecting the mental impressions or legal reasoning of the prosecuting attorney, the

information in the attached Exhibits constitutes attorney work product and is therefore excepted from disclosure under section 552.108.

After reviewing your arguments, we conclude that you may withhold exhibits A and D-F and some of exhibit B under section 552.108(a)(3) of the Government Code. We note, however, that information normally found on the front page of an offense report is generally considered public. *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, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

As for some of the documents in exhibit B, they have been filed with a court and are not protected from disclosure by section 552.108. Documents filed with the court are usually public documents and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). In this case, however, you argue that the documents in exhibit B are confidential and must be withheld because they involve juvenile conduct that occurred before January 1, 1996. 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. Currently, section 58.007 of the Family Code provides that law enforcement records concerning a child must not be publicly disclosed. Family Code Ann. § 58.007(c). However, the amending bill provides that “[c]onduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose.” Act of June 2, 1997, 75th Leg., R.S., ch. 1086, § 53(b), 1997 Tex. Sess. Law Serv. 10, 4199. It appears and you represent that, at the time the conduct occurred here, the applicable law in effect was former Family Code section 51.14 which provides, in pertinent part:

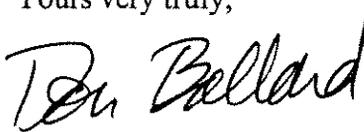
(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to 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. Gen. Laws 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

records at issue here relate to charges for which the juvenile was transferred under section 54.02 of the Family Code to a criminal court for prosecution, or that article 15.27 of the Code of Criminal Procedure applies. Moreover, it does not appear that any 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 Fam. Code § 51.14(d)(1), (2), (3)). Accordingly, we conclude that you must withhold the records in exhibit B under section 552.101 even if they are records of the court.

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 113247

Enclosures: Submitted documents

cc: Mr. David L. Swanson
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(w/o enclosures)