



May 13, 1999

Ms. Tenley A. Aldredge
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR99-1316

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124063.

The Travis County Sheriff (the "sheriff") received an open records request for "any offense reports as well as the investigative files covering any domestic relation, family disturbance or child custody offenses regarding" two named individuals. You have submitted to this office as responsive to the request a number of incident reports that you contend are excepted from required public disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

To the extent the requestor is asking for any unspecified records in which the named individuals are identified as a "suspect," the requestor, in essence, is asking that the sheriff compile those individuals' criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. The sheriff, therefore, must withhold pursuant to section 552.101 all incident reports in which the referenced individuals are identified as a suspect. We have attached a green flag to this type of information.

We now address the extent to which the sheriff must release the requested incident reports where the referenced individuals are not identified as a suspect. As noted above, section 552.101 of the Government Code also protects from public disclosure information made confidential by statutory law. Some of the records at issue pertain to juvenile conduct. Prior to its repeal by the Seventy-fourth 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. We conclude that the sheriff must withhold incident reports 9400047176 and 9400052562 in their entirety pursuant to former section 51.14(d).

This office has concluded, however, that section 58.007 of the Family Code, as enacted by the Seventy-fourth 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 Seventh-fifth Legislature amended section 58.007 to once again make juvenile law-enforcement records concerning juvenile conduct 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. The sheriff must withhold incident report numbers 9700093325, 9898000612, and 9900002684 in their entirety pursuant to section 58.007(c) because these reports all pertain to juvenile conduct that occurred after September 1, 1997.

One incident report, 9700064968, pertains to juvenile conduct that occurred between January 1, 1996 and September 1, 1997. We conclude that this incident report is not confidential under either section 51.14(d) or section 58.007 of the Family Code. In your original brief to this office, you contended that this incident report is excepted from required public disclosure pursuant to section 552.108(a)(1) of the Government Code, which excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” You asserted at that time that this incident report pertained to a pending criminal prosecution. After this office asked for confirmation that this case in fact was pending prosecution, you subsequently informed us that prosecution is not pending. We therefore conclude that the release of this incident report would not “interfere with the detection, investigation, or prosecution of crime” and that this report therefore must be released.¹

¹Although you subsequently sought to raise section 552.108(a)(2) with regard to this report, you did not raise this exception in connection with the report within the ten days required by section 552.301(a) of the Government Code. We therefore deem the sheriff to have waived the protection of section 552.108(a)(2) with regard to this particular report.

Finally, we address the applicability of section 552.108(a)(2) of the Government Code to the remaining incident reports. Section 552.108(a)(2) excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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.” After reviewing the records at issue, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) to the following incident reports: 8600014376, 9000033259, 9500075910, 960003815, 9600038155, 9700001778, 9700035511, 9700058950, 9700064960, 9700092196, and 9800026786. Most of the information contained in these reports therefore may be withheld.

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The sheriff must release these types of information from the eleven incident reports listed above in accordance with *Houston Chronicle Publishing Company 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).²

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.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/eaf

Ref.: ID# 124063

encl. Submitted documents

²We note that because the categories of information protected by section 552.130 of the Government Code do not constitute “front page” information, we need not address the applicability of this exception.

cc: Mr. Scott Spence
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(w/o enclosures)