



June 17, 1999

Ms. Rosalinda O. Fierro
Records Department
Office of the District Attorney
P.O. Box 1748
Austin, Texas 78767

OR99-1678

Dear Ms. Fierro:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124985.

Travis County (the "county") received a request that lists three cause numbers and the name of an individual. You assert that the records at issue are confidential under sections 552.101, 552.108, and 552.130 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that the request seeks the compiled criminal history record information ("CHRI") of the named individual and that this implicates the named individuals' common-law privacy as protected by section 552.101 of the Government Code. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

The compilation of all offense and arrest reports of a named individual constitutes a criminal history record of that individual. Criminal history information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation*. In *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the United States Supreme Court concluded that where an individual's CHRI is compiled or summarized by a governmental entity, the information takes on a character that implicates an individual's right of privacy in a manner that the same individual

records in an uncompiled state do not. To the extent that the requestor seeks the county to compile CHRI concerning the named individual, we agree that the county may not release such records.

However, the request specifically seeks three listed cause or report numbers. This portion of the request, because it seeks specific cases rather than compiled information about one individual, does not appear to be a request for CHRI. You have raised various exceptions to disclosure of these three files.

You assert that file number 90-2120 is confidential under section 552.101. Section 58.007(c) of the Family Code reads in pertinent part as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public

See also Fam. Code § 51.02(2) (defining “child”). Section 58.007(c) of the Family Code applies to juvenile records concerning conduct occurring on or after September 1, 1997, that are maintained by law enforcement agencies. File number 90-2120 is subject to the predecessor statute to section 58.007 that was in effect at the time of the offense. As it is our understanding that the predecessor statute makes these juvenile records confidential, file number 90-2120 must be withheld from disclosure.

You also assert that file number 90-2204 is protected from disclosure under section 552.101 of the Government Code. Subsection (a) of section 261.201 of the Family Code provides:

(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 . . . [the Family] 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 . . . chapter [261 of the Family Code] and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

We first note that it is our understanding that you have already released the records filed with the district court, and that the records at issue in this file have not been filed with a court. We agree that the information in file number 99-2204 may be disclosed only for purposes consistent with the Family Code and applicable federal or state law or under rules adopted by the agency that investigated the crime.¹ Since you have not informed this office that the investigating agency has adopted any rules providing for release of this information, we conclude that the information at issue is confidential and may not be disclosed.

You assert that cause number 95, 263 is protected from disclosure under sections 552.101 and 552.108 of the Government Code. You assert that the pre-sentence investigation report is excepted from disclosure under section 9(j) of article 42.12 of the Code of Criminal Procedure, in conjunction with section 552.101 of the Government Code. We agree that this provision makes the pre-sentence report confidential. It is our understanding from your brief that you contend the remaining documents in cause number 95,263 are protected from disclosure under section 552.108(a)(3) of the Government Code, which provides: section 552.108(a)(3), which provides:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted [from disclosure] 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;

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

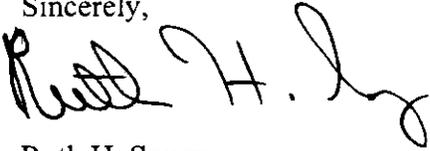
¹We note that section 261.201(f) provides that the department, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

We agree that, to the extent the remaining records in cause number 95, 263 were prepared by the prosecuting attorney, they are protected from disclosure under section 552.108(a)(3), based upon our review of the records and your representations to this office.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,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is written in a cursive style with a large initial "R" and "S".

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 124985

Encl. Submitted documents

cc: Ms. Annie Whitley
5403 Stuart Circle
Austin, Texas 78721
(w/o enclosures)

²We assume, however, that basic offense and arrest report information was released pursuant to section 552.108(c).