



June 1, 1999

Sheriff Jack Harwell
McLennan County Sheriff's Office
Courthouse Annex
Waco, Texas 76701

OR99-1708

Dear Sheriff Harwell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125078.

The McLennan County Sheriff's Office (the "sheriff") received a request for "all evidence collected by McLennan County Sheriffs [sic] department including written reports, statements by all parties involved, photographs, and anything available by law." You claim that the requested information is excepted from disclosure under sections 552.101, 552.108(a)(2), and 552.108(b)(2) of the Government Code. You submit to this office the requested information. The requestor also submits to this office arguments for releasing the requested information and documents for review. We have considered the exceptions you claim, the arguments of the requestor, and reviewed the submitted information.

Initially, you contend that the requested information involves a juvenile suspect and is excepted from public disclosure under section 552.101 of the Government Code and chapter 58 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 58.007 of the Family Code makes certain juvenile law enforcement records confidential. Family Code section 51.04(a) states that the Juvenile Justice Code, Title 3 of the Family Code, "covers the proceedings in all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a person who was a child within the meaning of [Title 3] at the time he engaged in the conduct." Thus, section 58.007 deems confidential law enforcement records from all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a child. 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. 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. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon).

This office has concluded that section 58.007 of the Family Code, as enacted by the Seventy-fourth Legislature, does not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential, effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). 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 the former section 51.14(d) or the current section 58.007 of the Family Code. Therefore, we conclude that the requested information concerning conduct that occurred on July 15, 1997 is not deemed confidential by the Family Code.

You also contend that the requested information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108 of the Government Code 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:

....

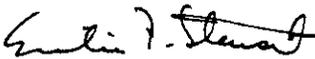
(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

You state that the investigation did not result in a conviction or deferred adjudication. We agree that section 552.108(a)(2) is applicable. However, 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). "Basic information" refers to the information held to be public in *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). In addition, some of the submitted documents were filed with a court. Documents filed with the court are public documents and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). Therefore, except for the front page information and the documents filed with a court, the sheriff may withhold the requested information from disclosure under section 552.108(a)(2). Although section 552.108 authorizes you to withhold the remaining requested information from disclosure, you may choose to release

all or part of the information at issue that is not otherwise confidential by law. *See Gov't Code § 552.007.*

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,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 125078

Encl: Submitted documents

cc: Mr. Charles C. Hutyra
295 Berger Road
West, Texas 76691
(Requestor's documents enclosed)