



August 8, 2000

Mr. Steven D. Monté  
Assistant City Attorney  
Office of City Attorney  
City of Dallas  
2014 Main Street, Room 206  
Dallas, Texas 75201

OR2000-2993

Dear Mr. Monté

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138116.

The Dallas Police Department (the “department”) received a request for “all written documentation (formal or informal) concerning our client.” You have submitted only two administrative investigations involving the named individual in response to the request. We assume that you have released the remainder of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses confidentiality provisions such as those found in the Family Code. Section 58.007 of the Family Code, and its predecessor section 51.14(d) provide for the confidentiality of juvenile law enforcement records.

Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for 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). Formal Investigation Control No. 94-485F contains documents that are juvenile records which pertain to juvenile conduct which occurred before January 1, 1996. Section 51.14(d) 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 [of a child] are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

In this instance, you do not indicate that the juvenile records contained in Formal Investigation Control No. 94-485F relate to charges for which the department transferred the juvenile under section 54.02 of the Family Code<sup>1</sup> to a criminal court for prosecution, or that article 15.27 of the Code of Criminal Procedure<sup>2</sup> 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)). Therefore, in this case, section 51.14(d) makes the submitted juvenile records confidential. Accordingly, we conclude that the department must withhold the juvenile records contained in Formal Investigation Control No. 94-485F pursuant to section 552.101 in conjunction with section 51.14(d) of the Family Code. We have marked the documents to be withheld. The remaining portion of this administrative investigation file must not be withheld under this confidentiality provision.

Next, we note that the Seventy-fourth Legislature repealed section 51.14 of the Family Code and replaced it with section 58.007 of the Family Code. We also note that the Seventy-fifth Legislature amended section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007 (c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

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<sup>1</sup>Act 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 subsecs. (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 subsecs. (a), (h), (j)).

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

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Internal Investigation Control No. 98-104 contains juvenile records that pertain to juvenile conduct which occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Therefore, the department's juvenile records contained in Internal Investigation Control No. 98-104 are confidential pursuant to section 58.007(c) of the Family Code. You must withhold the juvenile records contained in Internal Investigation Control No. 98-104 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. We have marked the documents to be withheld. The department must not withhold the remaining portion of this administrative investigation file under this confidentiality provision.

However, we find that the remaining portions of both administrative investigations contain information that is confidential under section 552.101 and the common law right to privacy. Section 552.101 also encompasses 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. Based on a review of the requested information, we find that the information identifying the juvenile suspects, including names, addresses, phone numbers, and names of relatives, that appear in the administrative investigations, should be withheld under section 552.101 in conjunction with the common law right of privacy. *See generally* Open Records Decision No. 339 (1982) (information pertaining to incident of sexual assault raises issue of common-law privacy). We have marked the information in the two administrative investigations that must be withheld pursuant to section 552.101 and the common law right to privacy.

In summary, the department must withhold the department's juvenile records contained in Formal Investigation Control No. 94-485F pursuant to section 552.101 in conjunction with section 51.14(d) of the Family Code. The department must withhold the department's

juvenile records contained in Internal Investigation Control No. 98-104 under section 552.101 in conjunction with section 58.007(c) of the Family Code. The department must redact the information identifying the juvenile suspects, including names, addresses, phone numbers, and names of relatives, that appear in the administrative hearings under section 552.101 in conjunction with the common law right of privacy that is contained in the documents. The department must release the remainder of the submitted documents.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a)

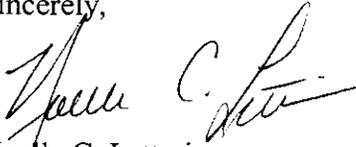
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Noelle C. Letteri". The signature is fluid and cursive, with a long horizontal stroke at the end.

Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

NCL/pr

Ref: ID# 138116

Encl. Submitted documents

cc: Mr. Richard L. Howard  
R.L.Howard & Associates  
2501 Oaklawn Avenue, Suite 360  
Dallas, Texas 75219  
(w/o enclosures)