



August 21, 2000

Mr. Keith Stretcher
City Attorney
City of Midland
300 North Loraine, Room 320
P O Box 1152
Midland Texas 79702-1152

OR2000-3195

Dear Mr. Stretcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 138216.

The City of Midland police department (the "department") received a request for copies of offense reports involving a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. You have provided Exhibits B and C as responsive information for this office to review. We have considered the exceptions you claim and reviewed the submitted information.

We first note that, if you determine that the request was made in an official capacity by a governmental body with which you share a related administrative aim, you may transfer the requested information to this requestor without waiving the department's ability to raise its discretionary exceptions in the future or violating the Act's prohibition against release of confidential information. This office ruled in Open Records Decision No. 661(1999) that whether a governmental entity may release information to another governmental entity is a question of policy rather than a question under the Act, as the Act is concerned with the required release of information to the *public*. Gov't Code §§ 552.001, .002, .021; *see* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision Nos. 661 (1999), 655 (1997).

For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and

economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision Nos. 661 (1999), 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 661 (1999), 655 (1997), 414 (1984). Release to a governmental body is not a release to the public for purposes of Government Code section 552.007, which prohibits the selective disclosure of information, or Government Code section 552.352, which provides criminal penalties for the release of information considered to be confidential. *See id.* The department may release this information to this requestor without waiving the department's ability to raise its discretionary exceptions in the future or violating the Act's prohibition against release of confidential information.

Alternatively, if you treat this request as a request from the public, release of the responsive information to this requestor must comply with the following discussion. As to Exhibit C, you assert that it is excepted from disclosure based on section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You inform us that the investigation which is the subject of Exhibit C has concluded and that the case was closed without conviction or deferred adjudication. We agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibit C from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information in Exhibit C that is not otherwise confidential by law. Gov't Code § 552.007.

You assert that some of the basic information may be confidential under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931

(1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1(1992). We do not find any intimate or embarrassing information in the information submitted for our review; therefore, the department must release basic information.

You next assert that Exhibit B is excepted from disclosure based on section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As noted above, section 552.101 excepts from disclosure information considered to be confidential by statute, including confidentiality provisions such as Family Code section 58.007 and its predecessor, section 51.14(d). 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 concluded in 1996 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 the 1997 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. Under sections 51.14(d) and 58.007, law enforcement records concerning a child are confidential. Section 51.02(1)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age.

Therefore, Exhibit B is confidential under section 51.14(d) as it concerns juvenile conduct that occurred before January 1, 1996. However, "inspection of the files and records is permitted by . . . law enforcement officers when necessary for the discharge of their official duties." Fam. Code § 51.14(d), (d)(3); *see* Act of May 22, 1993, 73rd Leg., R.S., ch. 461, 1993 Tex. Sess. Law Serv. 1854 (Vernon). Because inspection of the records by a law enforcement officer will not violate the confidentiality provision of section 51.14(d), the release to this requestor, Midland College Police Department, is not prohibited.

Finally, the submitted information contains a social security number the department may be required to withhold. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622

(1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the department may release Exhibits B and C to this requestor, a law enforcement agency, based on the interagency transfer doctrine. The department may withhold Exhibit C from this requestor based on section 552.108(a)(2), but must release basic information. The department must release the social security number except as discussed above. The department may allow this requestor to inspect Exhibit B, as provided by section 51.14(d) of the Family Code.

As we find sections 552.101 and 552.108 of the Government Code and section 51.14 of the Family Code dispositive, we do not address your section 552.130 assertion. 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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 138216

Encl. Submitted documents

cc: Mr. Charles Gunn
Midland College
3600 North Garfield
Midland, Texas 79705-6399
(w/o enclosures)