



April 24, 2001

Mr. Arturo Valdez
Lieutenant
City of McAllen
1501 Pecan Blvd.
McAllen, Texas 78501

OR2001-1644

Dear Lt. Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146435.

The City of McAllen Police Department (the "department") received a request for four specified police reports. Your argument attached to requested report numbers 96-22413 and 97-022091 raises section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code. Your argument attached to report numbers 97-025700 and 96-066177 raises section 552.108(a) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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. The Family Code includes provisions that protect the law enforcement records of a child. "Child" is defined as a person who is ten years of age or older and under 17 years of age or a person who is older than seventeen years of age and younger than 18 years of age and is found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age. Fam Code § 51.02(1). You raise section 51.14(d) of the Family Code. This statute was superceded with the enactment of section 58.007 of the Family Code. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). However, former Family Code section 51.14 was continued in effect to protect law enforcement records pertaining to juvenile criminal conduct that occurred before January 1, 1996. *Id.* Law enforcement records of juvenile conduct that occurred on or after September 1, 1997 are made confidential by section 58.007 of the Family Code. Law enforcement records of juvenile conduct that occurred on or after January 1, 1996 but before September 1, 1997, are not made confidential by statute.

Report 96-022413 is a law enforcement record of incident that occurred on April 11, 1996. Report 97-025400 is a law enforcement record of incident that occurred on July 25, 1997. Report 97-02291 is a law enforcement record of incident that occurred on June 23, 1997. There is no indication that Report 96-066177 is a law enforcement record of a child. These records are not made confidential by statute.

You apparently contend that Reports 96-066177 and 97-025700 are excepted from public disclosure by section 552.108(a)(1) of the Government Code. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In *Houston Chronicle Publ'g 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), the court delineated the law enforcement interests that are present in active cases. Open Records Decision No. 216 (1978). Thus, information may be withheld under section 552.108(a)(1) on a showing that the information is related to an ongoing investigation or prosecution. You relate that "in this particular case the investigation is ongoing." However, we note that the crime reported in 96-066177 is an assault that was reported on December 7, 1996. The crime reported in 97-025700 is an assault reported on July 25, 1977. These reported offenses cannot be prosecuted after two years from the commission of the offense. Code Crim. Proc §§ 12.01, 12.02. Since the prosecution of these offenses is barred by statutes of limitation, we conclude that these reports do not relate to ongoing investigations. Therefore, you have not demonstrated that release of the reports would interfere with law enforcement.

In summary, you must release all of the responsive information.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/tr

Ref: ID# 146435

Encl: Submitted documents

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(w/o enclosures)