



October 15, 2001

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
Box 850137
Mesquite, Texas 75185-0137

OR2001-4660

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153343.

The City of Mesquite Police Department (the "department") received a request for copies of all police reports, witness statements, and suspect statements pertaining to three specified cases. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have 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. Section 552.101 encompasses information protected from disclosure by other statutes. Prior to its repeal by the Seventy-fourth Legislature, section 51.14 of the Family Code provided, in relevant part, as follows:

(a) Except as provided by Subsection (e) of this section, or by Article 15.27, Code of Criminal Procedure, all files and records of a juvenile court, a clerk of court, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) an attorney for a party to the proceeding;

(3) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(4) with leave of juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(b) All files and records of a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court are open to inspection only by:

(1) the professional staff or consultants of the agency or institution;

(2) the judge, probation officers, and professional staff or consultants of the juvenile court;

(3) an attorney for the child;

(4) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the work of the agency or institution; or

(5) the Texas Department of Corrections, the Department of Public Safety, and the Texas Juvenile Probation Commission, for the purpose of maintaining statistical records of recidivism, and for diagnosis and classification.

.....

(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 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.

Despite the repeal of section 51.14 of the Family Code, law enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continue to be confidential pursuant to section 51.14.¹ Because the submitted information pertains to juvenile conduct that occurred prior to January 1, 1996, we conclude that it is governed by section 51.14. However, you state that the juvenile who is the subject of the submitted information was certified, tried, and convicted as an adult on all relevant charges. Because the juvenile defendant in these cases was tried as an adult in accordance with section 54.02 of the Family Code, the resulting criminal trials were not proceedings subject to the provisions of the Family Code. Consequently, none of the submitted information is confidential under section 51.14. Accordingly, you may not withhold any of the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with the informer's privilege. Texas courts have long recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. However, the informer's privilege only protects an informer's statement to the extent necessary to protect that informer's identity. *See Open Records Decision No. 549* at 5 (1990). Based on our review of the submitted information, we conclude that you have not demonstrated the applicability of the informer's privilege. *See Open Records Decision Nos. 515* at 3 (1988), *208* at 1-2 (1978) (finding privilege applicable where subject of information does not already know informer's identity). Accordingly, none of the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege.

You also claim that social security numbers contained within the submitted information are excepted from disclosure. 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.* You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that the social security numbers are confidential pursuant to

¹ See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Sess. Law Serv. 2591 (Vernon).

section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers at issue, you should ensure that the numbers were not obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Accordingly, you must withhold all drivers' license and license plate numbers contained within the submitted information pursuant to section 552.130 of the Government Code.

In summary, the social security numbers contained within the submitted information may be confidential pursuant to federal law. You must withhold from disclosure all drivers' license and license plate numbers contained within the submitted information pursuant to section 552.130 of the Government Code. You must release all other submitted information to the requestor.

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

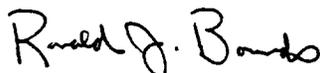
that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 153343

Enc. Submitted documents

cc: Ms. Sherri Kathleen Mendoza
1505 Shorehaven
Garland, Texas 75040
(w/o enclosures)