



May 1, 2002

Ms. Melissa L. Barloco
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2002-2265

Dear Ms. Barloco:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162146.

The Harris County Constable, Precinct Four (the "constable") received a request for two offense reports. You claim that the requested 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.

You assert that the requested information is excepted from disclosure based on section 552.101 of the Government Code. 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 confidentiality provisions. 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.

One of the records at issue, Exhibit B-1, concerns juvenile conduct that occurred prior to January 1, 1996. Therefore, it is confidential under the former section 51.14(d) of the Family Code and must be withheld from disclosure in its entirety pursuant to section 552.101 of the Government Code. However, we note that Exhibit B-2 is not a juvenile law enforcement record as it does not involve juvenile conduct. Because Exhibit B-2 does not involve an offense, section 58.007 is inapplicable. *See* Fam. Code sec. 51.02.

Section 552.101 also encompasses the common-law right of privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

We believe that some of the information in Exhibit B-2 is the type of information made confidential by *Industrial Foundation*. Accordingly, you must withhold the information which we have marked under section 552.101 from the requestor.

Finally, we note that some of the submitted information is confidential under section 552.130 of the Government Code. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must withhold the bracketed driver's license number pursuant to section 552.130.

In summary, you must withhold Exhibit B-1 under section 552.101 and former Family Code section 51.14(d). You must also withhold the information we have marked in Exhibit B-2 under section 552.101 and the common-law right of privacy. You must finally withhold the bracketed driver's license number under section 552.130.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

VGS

V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 162146

Enc: Submitted documents

c: Mr. James Toth
c/o Melissa L. Barloco
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700
(w/o enclosures)