



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

August 5, 2003

Lt. Arturo Valdez
Central Records Division
McAllen Police Department
P.O. Box 220
McAllen, Texas 78505

OR2003-5436

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# 185395.

The McAllen Police Department (the "department") received a written request for a particular offense report. You contend that the requested information is excepted from required disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) You contend that the submitted offense report is made confidential under former section 51.14 of the Family Code, which makes certain juvenile law-enforcement records confidential. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided as follows:

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 [pertaining to juvenile conduct] 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. [Emphasis added.]

Despite the repeal of section 51.14(d), law-enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continue to be confidential under that section.¹ However, after carefully reviewing the submitted information, we conclude that this report does not pertain to juvenile conduct.² Consequently, the submitted offense report is not made confidential under former section 51.14(d) of the Family Code.

You also contend that the submitted offense report is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a)(1) provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if “release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Section 552.108(b) provides in pertinent part that an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from disclosure if “release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, 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 or prosecution. *See* Gov’t Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the information at issue relates to a case in which the associated investigation or prosecution is ongoing. However, we note the information at issue pertains to an alleged instance of criminal mischief that occurred on May 2, 1994. Although you state that this particular case is still active, you have not explained, nor is it apparent to this office, why a misdemeanor charge that resulted in an arrest would still be pending over nine years later. Consequently, we conclude that you have not adequately explained how or why the release of the submitted information “would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a). Therefore, we conclude that the department may not withhold any portion of the submitted information pursuant to section 552.108 of the Government Code.

¹*See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Gen. Laws 2591 (Vernon).

²The Family Code defines a “child” as “a person who is ten years of age or older and under 17 years of age.” *See* Fam. Code § 51.02(2)(A).

We note, however, that the submitted offense report contains a social security number. Social security numbers are excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if the social security numbers were obtained or are maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). It is not apparent to us that the social security number contained in the records at issue was obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. 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 a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, the department should ensure that the number was not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

The submitted offense report also contains two driver's license numbers. Section 552.130(a)(1) of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the department must withhold the Texas driver's license numbers pursuant to section 552.130(a)(1) of the Government Code. The remaining submitted information must be released 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 Dep't of Pub. 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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/RWP/sdk

Ref: ID# 185395

Enc: Submitted documents

c: Ms. Maria Angelina Gonzalez
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McAllen, Texas 78501
(w/o enclosures)