



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2009

Ms. Evelyn Njuguna
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-05192

Dear Ms. Njuguna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 339031.

The Houston Police Department (the "department") received a request for criminal history information pertaining to the requestor's client. You state that some responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses statutory 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 juvenile criminal conduct occurring before January 1, 1996, are governed by the former

section 51.14 of the Family Code, which was continued in effect for that purpose.¹ The former section 51.14 provided in relevant part as follows:

(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.

Fam. Code § 51.14. The submitted information lists as a suspect an individual who was a "child" at the time of the offense. *See* Fam. Code § 52.01 (defining "child" for purposes of title 3 of Family Code as individual who is ten years of age or older and under seventeen years of age). You do not indicate that the information at issue here relates to charges for which the department transferred the juvenile under section 54.02 of the Family Code² to a criminal court for prosecution, or that article 15.27 of the Code of Criminal procedure applies.³ Because the submitted information pertains to juvenile conduct that occurred prior to January 1, 1996, we determine that it is confidential under former section 51.14.

However, the requestor asserts that he has a right of access to the records at issue pursuant to section 51.14(d)(2) of the Family Code. The requestor indicates that he is assisting one of the suspects in the juvenile report in a matter involving the Parole Division of the Texas Department of Criminal Justice. The requestor's client was seventeen at the time of the offense at issue, and thus is listed as an adult in the report.

Section 51.14(d)(2) states disclosure is permitted to "an attorney for a party to the proceeding." Because the requestor's client is listed as an adult in the report at issue, he was not a party to the Family Code proceeding, if any, related to this matter. We believe

¹Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591.

²Act of May 24, 1973, 63rd Leg., R.S., ch. 544, §1, 1973 Tex. Gen. Laws 1460, 1476-77; *amended by* Act of May 19, 1975, 64th Leg., R.S., ch 693, §§ 15-16, 1975 Tex. Gen. Laws 2152, 2156-57 (adding subsecs. (M), (j), (k), (l), *amended by* Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen. Laws 309 (amended subsecs. (a), (h), (j)).

³Act of May 22, 1993, 73rd Leg., R.S., ch. 461 § 1, 1993 Tex. Gen. Laws 1850-51.

section 51.14(d)(2) provides for inspection only by the attorney representing a party in the proceeding subject to the Family Code. Because the requestor's client was not a party to the Family Code proceeding, the requestor does not have a right of access to the information pursuant to section 51.14(d). *See* Act of May 22, 1993, 73rd Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)).

The requestor also claims a right of access to the submitted information under section 552.023 of the Government Code. Section 552.023 provides that a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023. Thus, a governmental body may not withhold information under an exception based on privacy when a requestor asks for information regarding himself. However, section 51.14 was not enacted solely to protect an individual's privacy. Thus, in this instance the requestor does not have a special right of access to the responsive information under section 552.023. Accordingly, the information must be withheld under section 552.101 of the Government Code in conjunction with former section 51.14(d) of Family Code.⁴

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

⁴As our ruling is dispositive, we do not address your remaining claim.

Ref: ID# 339031

Enc. Submitted documents

c: Requestor
(w/o enclosures)