



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2009

Ms. Terri Bradley
Records Division
Rosenberg Police Department
2120 Fourth Street
Rosenberg, Texas 77471

OR2009-06907

Dear Ms. Bradley:

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# 343591.

The Rosenberg Police Department (the "department") received a request for information related to a specific incident. You state that the department has released some information to the requestor. You claim that the submitted report is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, including section 51.14(d) of the Family Code. 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. See Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports that identify juvenile

¹Your brief to this office also states that the report at issue relates to "an open and active investigation" and you cite to *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976). Accordingly, we initially understood you to also raise section 552.108(a)(1) of the Government Code. However, in subsequent correspondence, you have informed us that this investigation concluded with a conviction and "there is no one further under investigation on this case." Therefore, we understand you to raise only section 552.101 as an exception against disclosure.

suspects or furnish basis for their identification). Law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by 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. Section 51.14 only applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. See Fam. Code § 51.02(2). In this instance, the submitted report pertains to an investigation of capital murder allegedly committed by a child prior to January 1, 1996. See *id.* § 51.03 (defining "delinquent conduct"). Therefore, the submitted report is generally subject to section 51.14 of the Family Code.

However, you inform us the child defendant listed in the submitted report was certified and prosecuted as an adult. Section 51.14(d) of the Family Code states:

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[.]

Fam. Code § 51.14(d) (repealed 1995) (emphasis added). This former provision expressly provided an exception to confidentiality for records of juvenile offenders who were certified to stand trial as an adult. Because the defendant in this instance was tried as an adult, we conclude that the submitted report is not confidential under former Family Code section 51.14(d).

We next note that section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. See *id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. See *id.* at 683. We have marked information that is highly intimate or embarrassing and not of legitimate public concern. The department must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, we note that section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

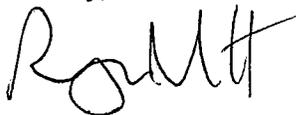
Gov't Code § 552.130(a).² Accordingly, the department must withhold the Texas driver's license numbers, license plate number, and personal identification numbers we have marked under section 552.130.

In summary, the department must: (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the Texas driver's license numbers, license plate number, and personal identification numbers we have marked under section 552.130; and (3) release the remainder of the submitted information.³

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/cc

²The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note that the information to be released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Ref: ID# 343591

Enc. Submitted documents

cc: Requestor
(w/o enclosures)