



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 3, 1993

Honorable Senfronia Thompson
Chair
Committee on Judicial Affairs
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 93-76

Re: Whether sections 51.14 through 51.16 of the Family Code require the Department of Public Safety to destroy or seal records of crimes committed by juveniles prior to 1975, and related question (ID# 20341)

Dear Representative Thompson:

You explain that you have received a letter from a citizen who was convicted of auto theft in Angelina County in 1961. He was 15 years old at the time. Apparently, he has had no subsequent arrests or convictions. You state that while Angelina County destroyed his juvenile record,¹ the Department of Public Safety ("DPS") "still maintains active files on his juvenile record of more than 30 years ago under the excuse that the statute did not pass until 1975." In essence, you ask under what authority DPS holds and disseminates these records, and whether sections 51.14 through 51.16 of the Family Code require DPS to destroy or seal records of crimes committed by juveniles prior to 1973.

In a letter brief submitted to this office, DPS states that it is authorized to maintain these records because in 1961, it was the central criminal records depository for the state, and, under the law at the time, "[t]here was no prohibition . . . against maintaining juvenile arrest records in the Central Record Depository." We agree. Under section 411.042 of the Government Code, and its predecessor statute, article 4413(14), V.T.C.S., DPS is required to maintain information about persons charged with crimes. *See* Gov't Code § 411.042(b)(1) (requiring DPS to "procure and file for record . . . pertinent information of all persons arrested for or charged with a criminal offense or convicted of a criminal offense, regardless of whether the conviction is probated"); V.T.C.S. art. 4413(14)(1) (repealed) (requiring DPS to procure and file for record pertinent information about all persons convicted of a felony in the state). This Government Code provision also authorizes DPS to disseminate criminal history information to "[a] person, entity or agency . . . entitled to receive the information under state or federal statutes, rules, regulations, or case law." *See* Gov't Code § 411.042(d).

¹A letter you submitted from Angelina County Juvenile Services states that "before 1975 the Texas Law stated that six (6) years past a person's 17th birthday, all juvenile records would be destroyed. If [the citizen at issue] did have any type of records with this department they were all destroyed in accordance with this law." It is unclear to us to which statute this letter refers.

As you note, section 51.14 of the Family Code expressly requires that juvenile records be maintained only on a local basis. Specifically, section 51.14 provides that 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 delinquency proceeding are open to inspection to a limited class of people. Fam. Code § 51.14(a) (providing for access to judge, probation officers, attorney for party, and certain agencies).² Subsection (c) of section 51.14 expressly states that law-enforcement files and records concerning a child "shall be kept separate from files and records of arrests of adults and shall be maintained on a local basis only and not sent to a central state or federal depository." *Id.* § 51.14(c).³ This prohibition in section 51.14 of the Family Code, however, came into effect in 1973 when chapter 51 of the Family Code was adopted. *See* Acts 1973, 63d Leg., ch. 544, § 1, at 1467. The predecessor statute to title 51 of the Family Code, now-repealed article 2338-1, V.T.C.S., contained no such provision,⁴ nor are we aware of any other statute in effect prior to 1973 which would have required DPS to seal or destroy juvenile records. *But see* note 1 *supra*.

The 1973 adoption of chapter 51 of the Family Code, which included the prohibition against central filing of juvenile records contained in section 51.14(c), did not

²Recent legislation, effective September 1, 1993, will require law enforcement agencies and certain officials to notify schools that their students have been arrested for or convicted of certain offenses, and will amend section 51.14 of the Family Code to permit such a release of information. *See* Acts 1993, 73d Leg., ch. 461, § 3 (eff. Sept. 1, 1993).

³Subsection (c) of section 51.14 of the Family Code was amended twice in 1987 by the 70th Legislature. One amendment provides that law-enforcement files and records of a person who is transferred from the Texas Youth Commission to the Texas Department of Criminal Justice under a determinate sentence may be transferred to a central state or federal depository for adult records on or after the date of transfer. Fam. Code § 51.14(c) (as amended by Acts 1987, 70th Leg., ch. 385, § 4, at 1892). The other amendment provides that information about a missing child or a child who has escaped from the custody of a juvenile detention facility may be transferred by the Texas Youth Commission, or any other agency to which the child has been committed, to the Texas Crime Information Center and the National Crime Information Center. Fam. Code § 51.14(c) (as amended by Acts 1987, 70th Leg., ch. 515, § 3, at 2127, and by Acts 1987, 70th Leg., ch. 576, § 1, at 2279). Subsection (c) was recently amended to provide for such a transfer of information if the child is the subject of a bench warrant or felony arrest warrant issued by a court after the child has fled the jurisdiction of the court. *See* Acts 1993, 73d Leg., ch. 252, § 1 (eff. May 23, 1993).

⁴In 1961, section 15 of article 2338-1, V.T.C.S. provided that "Juvenile Court records shall not be inspected by persons other than probation officers or other officers of the Juvenile Court unless otherwise directed by the court." Acts 1943, 48th Leg., ch. 204, § 15, at 317. It was amended in 1969 to provide that "information on juvenile cases in the grade of felony shall be made available by the court to the agencies responsible for the implementation of the federal Omnibus Crime Control and Safe Streets Act of 1968 . . ." Acts 1969, 61st Leg., ch. 492, § 1, at 1598. That legislation also added section 15-A which required officials to release information about cases involving children "charged with the violation of a penal law of the grade of felony" who had previously been declared delinquent. *Id.* § 2. Section 15 limited access to juvenile court records; it did not prohibit the release of juvenile arrest records in the possession of local law enforcement agencies to DPS.

affect the authority of DPS to continue to hold and disseminate records which came into its possession prior to the adoption. Indeed, the legislation which enacted chapter 51 of the Family Code expressly stated that "[a]ll things properly done under any previous existing rule or statute prior to the taking effect of this Act shall be treated as valid." See Acts 1973, 63d Leg., ch. 544, § 4, at 1485. Since 1973, the legislature has not, to our knowledge, enacted a statute which would prohibit DPS from maintaining or disseminating information about juvenile offenses which came into its possession prior to the adoption of chapter 51 of the Family Code. Therefore, we conclude that DPS is authorized to hold and disseminate information about juvenile offenses which came into its possession prior to 1973.

We also understand you to ask whether sections 51.14 through 51.16 of the Family Code require DPS to destroy or seal records of crimes committed by juveniles prior to 1973. Section 51.16 provides for the sealing and destruction of juvenile records under certain circumstances upon the application of the person to whom the records relate or the juvenile court's own motion. Fam. Code § 51.16(a), (i). Subsection (a) provides that a juvenile court may order the *sealing* of files and records if it finds that:

(1) two years have elapsed since final discharge of the person, or since the last official action in his case if there was no adjudication;

(2) since the time specified in Subdivision (1) of this subsection, he has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision, and no proceeding is pending seeking conviction or adjudication; and

(3) it is unlikely the person will engage in further delinquent conduct or conduct indicating a need for supervision or will commit a felony or a misdemeanor involving moral turpitude.⁵

Upon the entry of such an order, files and records ordered sealed are sent to the juvenile court issuing the order and "the juvenile court, clerk of court, prosecuting attorney, public or private agency or institution, and law-enforcement officers and agencies shall properly

⁵A juvenile court may not order the sealing of files and records if the person at issue "engaged in delinquent conduct that violated a penal law of the grade of felony," unless (i) the person is 23 years of age or older; (ii) the files and records have not been made a part of the person's adult record or used as evidence in the punishment phase of a criminal proceeding; and (iii) the person has not been convicted of a penal law for the grade of felony after becoming age 17. Fam. Code § 51.16(k). A prosecuting attorney may by motion reopen such files and records if, after the records are sealed "the person is indicted for a criminal offense that occurred before the person's 23rd birthday or at any time is charged with a capital offense or a felony of the first degree." *Id.* § 51.16(l).

reply that no record exists with respect to such person upon inquiry in any matter." *Id.* § 51.16(e).⁶

Subsection (i) of section 51.16 provides that a juvenile court may order the *destruction* of files and records if it finds that:

- (1) seven years have elapsed since the child's 16th birthday; and
- (2) the person has not been convicted of a felony.

A juvenile court may not order the destruction of files and records if the person at issue "engaged in delinquent conduct that violated a penal law of the grade of felony." *Id.* § 51.16(j).

Section 51.16 does not require DPS to seal or destroy records. The authority to issue an order to seal and destroy records is solely within the province of the juvenile court, upon the court's motion or the motion of the person to whom the records relate.⁷

⁶Section 51.16 was amended in 1975 by adding the following subsection:

(h) A person whose files and records have been sealed under this Act is not required in any proceeding or in any application for employment, information, or licensing to state that he has been the subject of a proceeding under this Act; and any statement that he has never been found to be a delinquent child shall never be held against the person in any criminal or civil proceeding.

See Acts 1975, 64th Leg., ch. 693, § 13, at 2156; *see also* Attorney General Opinion DM-9 (1991) (a person who was adjudicated delinquent on the basis of a felony charge is not afforded benefit provided by section 51.16(h)).

⁷You do not ask, and we do not address, whether section 51.16 permits a juvenile court to order the sealing or destruction of juvenile files and records in the possession of DPS, as opposed to local entities, or whether the procedures set forth in section 51.16 apply to records created before 1973. These issues are more appropriately resolved by a juvenile court in the context of a specific motion to seal or destroy records.

S U M M A R Y

The Department of Public Safety is authorized to maintain and disseminate information relating to juvenile offenses which came into its possession prior to the enactment of chapter 51 of the Family Code in 1973. Section 51.16 of the Family Code does not require the department to seal or destroy juvenile records.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee