



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 29, 1996

Honorable Ken Oden  
County Attorney  
County of Travis  
P.O. Box 1748  
Austin, Texas 78767

Open Records Decision No. 644

Re: Whether in light of the repeal of section 51.14 of the Family Code, juvenile law enforcement records maintained by law enforcement agencies remain confidential as of January 1, 1996, and related questions (ORQ-6)

Dear Mr. Oden:

As Travis County Attorney, you ask whether juvenile law enforcement records concerning conduct occurring on or after January 1, 1996, that are maintained by law enforcement agencies are confidential. Law enforcement records concerning conduct that occurred prior to that date are made confidential under former section 51.14 of the Family Code, and, therefore, are excepted from required public disclosure under section 552.101 of the Government Code.<sup>1</sup> Former section 51.14 provides, in part:

(a) Except as provided by Subsection (e) of this section, or by Article 15.27, Code of Criminal Procedure, all 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 proceeding under this title are open to inspection only by:

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<sup>1</sup>Section 552.101 of the Government Code excepts from required public disclosure information that is "confidential by law," and encompasses information made confidential by statute. This section is one of the specific exceptions to disclosure found in chapter 552 of the Government Code. Chapter 552 generally provides that all information collected, assembled, or maintained by or for a governmental body in connection with official business is public information that is available to the public, unless the information falls within a specific exception to disclosure. See Gov't Code §§ 552.002, .021; Open Records Decision No. 565 (1990) at 9-10.

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) an attorney for a party to the proceeding;

(3) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(4) with leave of juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

....

(c) Except as provided by this subsection, 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. The law-enforcement files and records of a person who is transferred from the Texas Youth Commission to the Texas Department of Corrections under a determinate sentence may be transferred to a central state or federal depository for adult records on or after the date of transfer.<sup>2</sup>

(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

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<sup>2</sup>Act of May 12, 1993, 73d Leg., R.S., ch. 252, § 1, 1993 Tex. Gen. Laws 554, 555, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590.

(3) law-enforcement officers when necessary for the discharge of their official duties.

Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (emphasis added). This section was repealed, however, by the Seventy-fourth Legislature. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590. The Seventy-fourth Legislature replaced these provisions concerning juvenile criminal records with section 58.007 of the Family Code,<sup>3</sup> which provides, in part:

(b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney for a party to the proceeding;

(4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child shall:

(1) be kept separate from adult files and records; and

(2) be maintained on a local basis only and not sent to a central state or federal depository.

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<sup>3</sup>This provision applies only to conduct occurring on or after January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Gen. Laws 2517, 2591. Conduct that occurred prior to January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose. *Id.*

(d) The law enforcement files and records of a person who is transferred from the Texas Youth Commission to the institutional division or the pardons and paroles division of the Texas Department of Criminal Justice may be transferred to a central state or federal depository for adult records on or after the date of transfer.

(e) Law enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 and a criminal justice agency as that term is defined by Section 411.082, Government Code.

Section 58.007 appears to track many of the provisions of former section 51.14, but it omits the language in former section 51.14(d) that "law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public." While section 58.007 restricts disclosure for records and files of a juvenile court, a clerk of court, a juvenile probation department, and a prosecuting attorney relating to a child, it does not contain a confidentiality provision that restricts access to juvenile law enforcement records and files in the hands of a law enforcement agency. Although section 58.007(e) provides that law enforcement records concerning juveniles "may" be inspected by a juvenile or criminal justice agency, the provision contains no restriction that limits inspection only to these two types of agencies. Thus, the new law regarding records and files of juvenile offenders does not expressly prohibit the release of law enforcement records.

Section 552.001 of the Government Code "forcefully articulates a policy of open government," *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 675 (Tex. 1995), and provides that chapter 552 "shall be liberally construed in favor of granting a request for information," Gov't Code § 552.001(b). Based on this presumption in favor of openness, this office has required express language making information confidential when construing statutory provisions. Open Records Decision No. 478 (1987) at 2. The plain language of section 58.007 of the Family Code makes confidential only the records and files of a juvenile court, a court clerk, a juvenile probation department, and a prosecuting attorney relating to a child. Moreover, section 58.007 specifically omits the language in former section 51.14(d) of the Family Code that makes juvenile records held by law enforcement agencies confidential. When interpreting a statute that is unambiguous, effect must be given to its clear and plain language. *See Republicbank Dallas v. Interkal, Inc.*, 691 S.W.2d 605, 607 (Tex. 1985). Additionally, when the legislature amends a law, it is presumed that it intends to change the law. *American Surety Co. of New York v. Axtell Co.*, 120 Tex. 166, 36 S.W.2d 715, 719 (1931); *Schott v. Leissner*, 659 S.W.2d 752, 754 (Tex. App.--Corpus Christi 1983, writ ref'd n.r.e.). We must conclude, therefore, that records of juvenile offenders concerning conduct occurring on or after January 1, 1996, that are held by law enforcement agencies are not made confidential under section 58.007 of the Family Code.

We note that other statutes and exceptions to disclosure may protect certain information concerning juvenile offenders. Sections 58.001 and 58.003 of the Family Code provide for the destruction or sealing of juvenile records under certain conditions. Section 58.106(a) protects certain information maintained in the Department of Public Safety's juvenile justice information system. Additionally, section 552.108 of the Government Code exempts from disclosure certain information relating to both open and closed criminal investigations. *See generally* Open Records Decision No. 636 (1995).

### S U M M A R Y

Section 58.007 of the Family Code does not make confidential juvenile law enforcement records concerning conduct occurring on or after January 1, 1996, that are maintained by law enforcement agencies. Other statutory provisions and exceptions to disclosure may apply to this information. Law enforcement records concerning conduct that occurred before January 1, 1996, are governed by former section 51.14(d) of the Family Code, which is continued in effect for that purpose.

Yours very truly,



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