



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 30, 1995

Mr. D. A. Blackburn
City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR95-163

Dear Mr. Blackburn:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28597.

The City of Killeen (the "city") received a request concerning a motor vehicle accident report involving a juvenile. The city contends that the requested information is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 51.14 of the Family Code provides that:

(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.

(e) *This section does not apply to files and records relating to a child that are required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state.* [Emphasis added.]

You contend that the report should be withheld because it is a record pertaining to a juvenile arrest and therefore confidential under section 51.14(d). Although you acknowledge that section 51.14(e) provides that the confidentiality of police juvenile records does not extend to records of a child "required or authorized to be maintained under the laws regulating the operation of motor vehicles," you argue that section 51.14(e) relates only to "juvenile accident reports **not indicating an offense.**" You would therefore conclude that "the accident report in question is not a public record because it reflects a juvenile offense." We disagree.

Section 51.14 is part of title 3 of the Family Code which governs delinquent children and children in need of supervision. Section 51.03(a) defines delinquent conduct in part as:

(1) conduct, *other than a traffic offense*, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail. [Emphasis added.]

It is clear from the plain language of section 51.03(a)(1) that traffic offenses are excluded from the types of conduct regulated by title 3 of the Family Code.¹ In light of section 51.03(a)(1), we believe that section 51.14(e) must be read as encompassing all "files and records relating to a child that are required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state" not just those files and records relating to noncriminal offenses as you would have us read this section. The document submitted for our review concerns a traffic offense by a juvenile. Accordingly, the requested information is not made confidential under section 51.14(d) of the Family Code.

Section 552.101 also incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

¹Section 51.03(a)(3) specifically includes driving while under the influence of intoxicating liquor or driving while under the influence of drugs in the definition of "delinquent conduct."

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that 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. 540 S.W.2d at 683. There is a legitimate public interest in the basic information concerning an arrest. See *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (certain factual information generally found on front page of police offense reports is public information); Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to public). Furthermore, the privacy test of *Industrial Foundation* permits no inquiry into facts about a specific individual on the basis of the contention that that person is more sensitive than one of ordinary sensibilities. Open Records Decision No. 438 (1986). Accordingly, the fact that the offender is a juvenile does not make the information confidential under common-law privacy. You may not withhold the requested information under the common-law privacy doctrine. As you raise no other exceptions to disclosure, the information must be released in its entirety.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LBC/rho

²We note that you raise an additional question concerning the applicability of section 552.108 of the Government Code to supplemental reports or investigative documents concerning motor vehicle accident reports. However, there do not appear to be any supplemental reports or investigative documents at issue in the current request for information under the Open Records Act. The attorney general has authority pursuant to article IV, section 22 of the Texas Constitution and sections 402.041 through 402.045 of the Government Code to issue legal opinions to certain public officers, who are identified in sections 402.042 and 402.043 of the Government Code. The attorney general may not give legal advice or a written opinion to any other person. Gov't Code § 402.045. A city attorney is not an authorized requestor under section 402.042 of the Government Code. Accordingly, we are statutorily restricted from addressing your final question. *Id.*

Ref.: ID# 28597

Enclosures: Submitted documents

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