



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 19, 1996

Mr. Gustavo L. Acevedo, Jr.
Schulman, Walheim, Heidelberg & Acevedo, Inc.
745 E. Mulberry, Suite 700
San Antonio, Texas 78212

OR96-0351

Dear Mr. Acevedo:

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# 38159.

The United Independent School District (the "district"), whom you represent, received a request for "all case/offense reports prepared by UISD Police Department that have occurred on UISD jurisdiction." You have submitted a representative sample of the requested records for our review and claim that sections 552.101 and 552.108 of the Government Code exempt the records from required public disclosure. We address your arguments in turn.

You argue that section 552.101 in conjunction with section 51.14(d) of the Family Code exempts some of the records from required public disclosure. Section 51.14(d) of the Family Code was repealed in the last legislative session. Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 100, 105, 106, 1995 Tex. Sess. Law Serv. 2517, 2590-91 (Vernon). Family Code sections 58.007, 58.102, and 58.106 essentially replaced section 51.14. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 53, 1995 Tex. Sess. Law Serv. 2517, 2552-53, 2555. However, these amendments apply only to conduct that occurs on or after January 1, 1996. *Id.* § 106, 1995 Tex. Sess. Law Serv. at 2591. "Conduct that occurs before 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.* The records submitted

for our review concern conduct that occurred before January 1, 1996. Accordingly, we address your claims under section 51.14(d).¹

Section 51.14(d) of the Family Code provides:

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.

See also Open Records Decision No. 181 (1977) at 2 (holding that police reports which identify juveniles or furnish basis for their identification are excepted by Fam. Code § 51.14(d)).

We have examined the information submitted to us for review. We conclude that some of the records identify a juvenile or furnish a basis for a juvenile's identification. Moreover, it is not apparent to this office that any of the exceptions to the confidentiality provision set forth in section 51.14(d) apply in this instance. Accordingly, those offense report regarding juvenile offenders must be withheld from required public disclosure under section 552.101 of the Government Code in conjunction with section 51.14(d) of the Family Code.

We note, however, that some of the records submitted for our review do not reference juvenile conduct. Section 51.02 provides that in title 3 of the Family Code "child" has the following meaning:

- (1) "Child" means a person who is:

¹We assume that the request is for all offense reports prepared by the district police department as of the request date, January 8, 1996. You have not submitted any records dated between January 1 and 8, 1996; therefore, we assume no such records exist. Thus, we do not address the applicability of sections 58.007, 58.102, and 58.106 of the Family Code. If the district does maintain offense reports dated between January 1 and 8 that reference conduct by a juvenile offender that occurred on or after January 1, 1996, we suggest that you submit such records for a ruling on the applicability of sections 58.007, 58.102, and 58.106.

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Title 3 of the Family Code governs delinquent children and children in need of supervision. However, a child cannot be declared to be a delinquent child subject to a proceeding under title 3 unless he is within the age limit set forth in the statute. *See Steed v. State*, 183 S.W.2d 458, 460 (Tex. 1944); *Ballard v. State*, 192 S.W.2d 329, 330 (Tex. Civ. App.--Amarillo 1946). Some of the information submitted for our review concerns individuals who do not fit within the statutory definition of a child for purposes of section 51.14(d). Accordingly, you may only withhold under section 51.14(d) those offense reports concerning "children" as defined in section 51.02 of the Family Code.

You next claim that the requested records are excepted from disclosure under section 552.108 of the Government Code. Section 552.108 excepts from required public disclosure a "record of a law enforcement agency or prosecutor that deals with the detection, investigation, and prosecution of crime." In an open criminal case, section 552.108 exempts from disclosure all information except that normally found on the first page of the offense report. *See generally 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); Open Records Decision No. 127 (1976). Once a case is closed, either administratively or by conviction, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." Open Records Decision No. 553 (1990) at 4 (and cases cited therein).

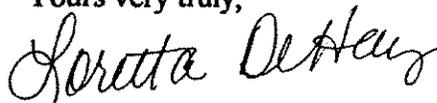
We are unable to determine whether the records submitted for our review are still open or whether they have been closed administratively or by conviction. At any rate, in those cases that are currently open, you must release the type of information normally found on the front page of an offense report, unless the offense report is confidential in its entirety under section 51.14(d) of the Family Code. We have enclosed an excerpt from Open Records Decision No. 127 (1976), which lists the types of information that you must disclose. For those cases that have been closed either administratively or by conviction, you must release the entire offense report.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

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

under the facts presented to us in this request and should not be relied upon as a previous determination 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 Records Division

LRD/ch

Ref: ID# 38159

Enclosures: Marked documents

cc: Ms. Marcia O. Jovel
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(w/o enclosures)