



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 22, 1996

Mr. Yuri Calderon
Assistant School Attorney
Houston Independent School District
Hattie Mae White Administration Building
3830 Richmond Avenue
Houston, Texas 77027-5838

OR96-0760

Dear Mr. Calderon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 29521.

The Houston Independent School District (the "district") has received a request for "any Houston Police Department or H.I.S.D. police reports involving [the requestor's] son." You contend that the information at issue may be excepted from disclosure pursuant to section 552.108 of the Government Code.

Section 552.108 excepts from disclosure (a) information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime and (b) internal records or notations of a law enforcement agency or prosecutor that are maintained for internal use in matters relating to law enforcement or prosecution. Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. *Open Records Decision Nos. 474 (1987), 372 (1983).*

When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. *Open Records Decision No. 611 (1992) at 2.* Certain factual information, which is generally found on the front page of police offense reports, is public even during an active investigation. *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) at 3-4 (listing factual information available to public). Once a case is closed, however, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." See Open Records Decision No. 553 (1990) at 4 (and cases cited therein). Moreover, the agency claiming an exception under 552.108 must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. See Open Records Decision No. 434 (1986) at 3.

You advise us that the district is in possession of a copy of an offense report prepared by the Houston Police Department which is responsive to the request. You further advise us that the district "has no information on whether . . . [the case has] been prosecuted or whether the charges have been dropped." We note that section 552.108(a) is a discretionary exception and may be waived by a governmental body. As you have neither demonstrated that this case is still under active investigation or prosecution or, if not still under active investigation or prosecution, how release of this information will unduly interfere with law enforcement or prosecution, we conclude that you may not withhold any of the requested information under section 552.108 of the Government Code.

However, the Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Section 552.101 of the act excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Former section 51.14(d) of the Family Code, provides, in pertinent part:

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 [concerning a child] are not open to public inspection nor may their contents be disclosed to the public¹

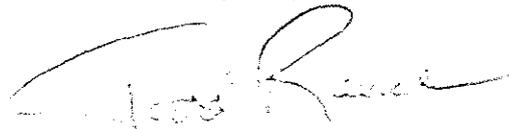
(Footnote added). See also Open Records Decision No. 181 (1977) at 2 (holding that police reports which identify juveniles or furnish a basis for their identification are excepted by section 51.14(d)).

¹We note that in the recent legislative session, the 74th Legislature repealed section 51.14 of the Family Code, effective January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 100, 105, 106, 1995 Tex. Sess. Law Serv. 2517, 2590-91 (Vernon). We do not address in this ruling the effect of the legislature's action on requests made after January 1, 1996.

We conclude that the offense report identifies a juvenile or furnishes a basis for a juvenile's identification. Furthermore, we are unable to determine whether any of the exceptions to the confidentiality provision set forth in section 51.14(d) apply in this instance.² Accordingly, this information 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 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 29521

Enclosures: Submitted documents

cc: Ms. Julie Collazo
4512 Floyd
Houston, Texas 77007
(w/o enclosures)

²Under former section 51.14(d), inspection of these 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.