



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 20, 1996

Mr. A. Don Crowder  
City Attorney  
City of Allen  
P.O. Box 26  
Allen Texas 75013-0026

OR96-0987

Dear Mr. Crowder:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40488.

The City of Allen (the "city") received a request for "all records related to the performance and/or conduct of current commissioned police officers in the City of Allen from Jan. 1, 1993, to the present. This would include, but not be limited to, evaluations, disciplinary actions, internal and external letters of commendation and criticism and any other related documents and communications." You have submitted a sample of the requested information and state that you believe the information is excepted from required public disclosure based on sections 552.101 and 552.102 of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code excepts from required public disclosure information that is deemed confidential by law, either constitutional, statutory, or by judicial decision. You raise no law that would deem this information confidential.

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<sup>1</sup>In 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

Because the Open Records Act imposes criminal penalties for the release of confidential law, this office will raise statutes that make requested information confidential. See Gov't Code § 552.352.

We observe that among the documents you submitted is a record of an offense committed before January 1, 1996, by individuals we believe to be juveniles. The release of law enforcement records of offenses committed by a juvenile before January 1, 1996 is governed by former Family Code section 51.14(d),<sup>2</sup> which provides, in pertinent part:

(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 [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.<sup>3</sup>

In Open Records Decision No. 181 (1977) at 2, this office held that former section 51.14(d) excepts police reports which identify juveniles or furnish a basis for their identification. See also Open Records Decision No. 394 (1983) at 4-5 (applying former Fam. Code § 51.14(d) to "police blotter" and related information). The record does not indicate that the offense report at issue here relates to charges for which the city transferred the juvenile under section 54.02 of the Family Code<sup>4</sup> to a criminal court for prosecution, nor that article 15.27 of the Code of Criminal Procedure<sup>5</sup> applies. Moreover, we do not understand any of the exceptions to former section 51.14(d) to apply here.<sup>6</sup> Accordingly, we conclude that the city must withhold the record of the juvenile offenders under section 552.101 as information deemed confidential by law.

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<sup>2</sup>The Family Code was substantially amended by the Seventy-fourth Legislature including the repeal of section 51.14. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. However, the amendments to the Family Code 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 requested information concerns conduct that occurred before January 1, 1996.

<sup>3</sup>Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590.

<sup>4</sup>Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476-77, *amended by* Act of May 19, 1975, 64th Leg., R.S., ch. 693, §§ 15-16, 1975 Tex. Gen. Laws 2152, 2156-57 (adding subsecs. (m), (j), (k), (l)), *amended by* Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen. Laws 309 (amending subsecs. (a), (h), (j)).

<sup>5</sup>Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.

<sup>6</sup>See *id.* § 3, 1993 Tex. Gen. Laws at 1852 (repealed 1995) (former Fam. Code § 51.14(d)(1), (2), (3)).

Section 552.102 reads as follows:

(a) Information is excepted from [public disclosure] if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's representative as public information is made available under this chapter. The exception to public disclosure created by this subsection is in addition to any exception created by Section 552.024. Public access to personnel information covered by Section 552.024 is denied to the extent provided by that section.

The test to be applied to information claimed to be protected under section 552.102(a) is the same test formulated by the Texas Supreme Court in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, information may be withheld under section 552.102(a) if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

We do not believe the information you submitted contains highly intimate or embarrassing facts about a person's private affairs. *See Open Records Decision No. 418 (1984)*. Accordingly, the city may not withhold any of the requested information based on section 552.102 of the Government Code.

We are resolving this matter with this 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,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID#40488

Enclosures: Submitted documents

cc: Mr. Tim Pareti  
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(w/o enclosures)