



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1997

Mr. John Steiner
Division Chief
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR97-0218

Dear Mr. Steiner:

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# 103314.

The Austin Police Department (the "department") received two open records requests for two particular incident reports. You have submitted to this office for review, in addition to the requested records, a third incident report that may also come within the ambit of one of the requests. You seek to withhold the requested information pursuant to section 552.108 of the Government Code. You also contend that portions of one of the offense reports are made confidential by section 51.14(d) of the Family Code.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Because the records at issue come within the purview of section 552.108, we conclude that most of the information at issue may be withheld under this section.¹

¹We note that the department may not withhold pursuant to section 552.108 information that is specifically made public by other law. *See, e.g.*, Open Records Decision Nos. 451 (1986), 391 (1983). Two of the incident reports at issue pertain to the service of a search warrant. Article 18.01(b) of the Code of Criminal Procedure specifically provides that executed search warrant affidavits are public information. If the

We note, however, that information normally found on the front page of an offense report, including a *detailed* description of the offense, is generally considered public. *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). Thus, the department must release the types of information that are considered to be front page offense report information, unless the information is deemed confidential by law. *See* Gov't Code § 552.007. In this regard we note that in the past legislative session, the 74th Legislature repealed section 51.14 of the Family Code and substantially revised it as part of chapter 58 of the code, effective January 1, 1996.² Prior to its repeal, section 51.14(d) provided as follows:

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.

Despite the repeal of section 51.14(d), law-enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continues to be confidential under that section.³ Incident Report #94-0440432, which pertains to juvenile conduct, is confidential under section 51.14(d) of the Family Code and therefore must be withheld in its entirety pursuant to section 552.101 of the Government Code.⁴

department possesses a copy of the search warrant affidavits, they may not be withheld pursuant to section 552.108.

²*See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 53, 100, 105, 106, 1995 Tex. Sess. Law Serv. 2517, 2549-53, 2590-91 (Vernon). *See also* Open Records Decision No. 644 (1996) (effect of repeal on juvenile law-enforcement records).

³*See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Sess. Law Serv. 2591 (Vernon).

⁴We note, however, that section 58.007(c)(1) of the Family Code, as well as its predecessor statute, section 51.14(c), requires law-enforcement agencies to keep juvenile and adult records separate from each other.

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 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/ch

Ref.: ID# 103314

Enclosures: Submitted documents

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