



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 18, 1997

Mr. Claude H. Drinnen
First Assistant City Attorney
Legal Department
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR97-0555

Dear Mr. Drinnen:

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# 105066.

The Amarillo Police Department (the "department"), which you represent, received a request for sixteen incident reports. You advise this office that one of the requested documents, incident report number 91-89597, is not subject to any exception to disclosure; thus, we presume that this record has been released to the requestor. You contend that the remaining documents are excepted from public disclosure by section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted documents.

Initially, we observe that incident report number 95-84755 does not appear to involve juvenile offenders. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *See Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). As incident report number 95-84755 does not demonstrate on its face that it implicates information deemed confidential by law or under common-law privacy, we conclude that you must release it to the requestor.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Section 51.14(d) of the Family Code was repealed by the Seventy-fourth

Legislature. Act of May 27, 1995, 74th Leg., R.S., 1995 Tex. Gen. Laws 2517, 2590. The Seventy-fourth Legislature replaced the provisions concerning juvenile criminal records with section 58.007 of the Family Code. However, conduct that occurred prior to 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.* We note that the conduct in incident report numbers 90-45495, 91-38358, 90-62787, 92-4383, 90-41776, 92-13190, 92-8649, 90-88468, 91-80304, 92-7776, 91-70867, 92-7441, and 92-27868 occurred before January 1, 1996. Therefore, we must determine if section 51.14(d) of the Family Code excepts those reports from required public disclosure.

Section 51.14(d) 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 public

It appears that these thirteen reports do not involve a charge for which the juveniles were transferred under section 54.02 of the Family Code. It is not apparent that any of the provisions allowing inspection of the records apply to the requestor. Additionally, none of the exceptions to section 51.14(d) apply here. We conclude that the department must withhold these thirteen offense reports under section 51.14(d) of the Family Code.¹

The remaining report, incident report number 91-10054, appears to involve an allegation of child abuse. Section 261.201 of the Family Code reads as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

¹We note that although the person who is identified as the offender in incident report number 92-27868 is an adult, this document also appears to relate to, and refers to, juvenile conduct made the subject of a separate report. Therefore, we have marked the portions of this document which must be withheld pursuant to section 51.14(d) of the Family Code.

We observe that the information in incident report number 91-10054 appears to consist of "reports, records, communications, and working papers used or developed in an investigation" pursuant to chapter 261 of the Family Code. See Family Code §§ 262.001 (defining abuse and neglect), 261.103 (report shall be made to any local or state law enforcement agency). Accordingly, we conclude that this document is related to an incident of alleged child abuse or neglect, and is a record developed in an investigation under chapter 261 of the Family Code. This incident report is therefore confidential and must be withheld in its entirety under section 552.101 of the Government 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 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,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref.: ID# 105066

Enclosures: Marked documents/submitted documents

cc: Mr. Robert Bruno
P.O. Box 30911
Albuquerque, New Mexico 81190
(w/o enclosures)

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