



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 20, 1997

Captain Robert Taylor
Amarillo Police Department
200 E. 3rd
Amarillo, Texas 79101-1514

OR97-1153

Dear Captain Taylor:

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# 106129.

The Amarillo Police Department (the "department") received open records requests for the department's records in which certain named individuals are identified as suspects, witnesses, or complainants. You contend the requested records are excepted from required public disclosure by sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common-law right of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note at the outset that to the extent the requestor is asking for any unspecified records in which the named individuals are identified as a "suspect," the requestor, in essence, is asking that the department compile those individuals' criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. The department, therefore, must withhold all compilations of the referenced individuals' criminal histories pursuant to section 552.101.

We note, however, that the federal regulations referenced in *Reporter's Committee* which govern the release of criminal history information provide that “[n]othing in these regulations prevents a criminal justice agency from disclosing to the public criminal history record information related to the offense for which an individual is currently within the criminal justice system.” 28 C.F.R. § 20.20(c); *see also* Gov’t Code § 411.081(b) (similar provision under Texas law governing release of criminal history information that law enforcement agencies obtain from the Texas Department of Public Safety or other state law enforcement agencies). Thus, we do not believe that the common-law right to privacy extends to criminal history information “related to an offense for which an individual is currently within the criminal justice system.”

Section 552.101 of the Government Code also excepts from disclosure information made confidential by statute. 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, 1996.¹ 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.² Two of the incident reports you submitted to this office pertain to juvenile conduct that occurred before the effective date of the repeal and are therefore confidential under section 51.14(d) of the Family Code. These two reports must be withheld in their entirety pursuant to section 552.101 of the Government Code.

¹See 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).

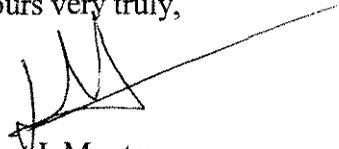
²See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Sess. Law Serv. 2591 (Vernon).

We now address the remaining requested documents not discussed above. 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 requested documents clearly come within the purview of section 552.108, we conclude that most of the information submitted to this office may be withheld under this section.

We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ’g 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, even if this information is not actually located on the front page of the offense report. Although section 552.108 authorizes the department to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/RWP/ glg

Ref.: ID# 106129

Enclosures: Submitted documents

cc: Ms. Charly Hopkins
Underwood, Wilson, Berry, Stein & Johnson, P.C.
P.O. Box 9158
Amarillo, Texas 79105-9158
(w/o enclosures)

