



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1997

Ms. Elaine S. Hengen
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR97-2699

Dear Ms. Hengen:

You ask this office to reconsider our ruling in Open Records Letter No. 97-2106 (1997). Your request for reconsideration was assigned ID# 111444.

The El Paso Police Department (the "department") received two separate unrelated open records requests for police reports pertaining to incidents in which juvenile suspects were arrested. In Open Records Letter No. 97-2106 (1997), we concluded that the department could withhold much of the information contained in the supplemental reports under section 552.108 of the Government Code, except for "front page offense report information." We also concluded that the department could not withhold the identities of the juvenile suspects on the basis of common-law privacy under section 552.101 of the Government Code, or under various provisions in the Family Code.

Both of the requested police reports pertain to instances in which the juvenile suspects was placed in a "first offender program." In your request for reconsideration regarding one of the requests, you explain that the juvenile suspect has completed the program. You contend that based on this new information, the child's identity and any other information regarding the offense is confidential under section 552.101 of the Government Code. You argue that because section 58.001(c) of the Family Code requires a law enforcement agency to destroy all information relating to a child placed in the program 90 days from the date of completion, and it has been less than 60 days since the juvenile completed the program, that the information relating to the juvenile is confidential under section 552.101 of the Government Code until it is destroyed. *But see* Loc. Gov't Code §202.002(b) (local government records subject to request for records under Gov't Code chapter 552 may not be destroyed pursuant to records control schedule adopted under subtitle until request resolved).

You now argue that because we acknowledged that section 58.001(c) establishes a statutory privacy interest in the information upon the juvenile's completion of the first offender program, that the information relating to the juvenile is now confidential under section 552.101 of the Government Code. As a general rule, however, statutory confidentiality, even that which is intended to protect privacy interests, requires express language making particular information confidential. *See* Open Records Decision No. 478 (1987). As we noted in Open Records Letter No. 97-2106 (1997), because there is no express statutory language that pertains to the records at issue prior to the time, if any, for their destruction, such confidentiality cannot be inferred from other sections of the Family Code. The department, therefore, may not in this instance withhold the "basic" front page offense report information contained in the supplemental report pursuant to either section 552.101 or 552.108.

Furthermore, given the fact that the juvenile has now completed the first offender program, we understand that the file is no longer pending for purposes of section 552.108. Therefore, the records at issue in the request for reconsideration may not be withheld under section 552.108 as you have not otherwise explained how release of the information would interfere with law enforcement or prosecution under section 552.108(a)(1). Moreover, we do not believe that section 552.108(a)(2) applies in this instance.

We, therefore, decline to overrule Open Records Letter No. 97-2106 (1997). If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 111444

Enclosures: Submitted documents

cc: Ms. Alicia Schultz
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