



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 14, 1998

Mr. Miles K. Risley  
City Attorney  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR98-0967

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114521.

The City of Victoria (the "city") received a request for records compiled over the last six months on a particular juvenile. You contend that the requested records are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and have reviewed the records at issue.

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 juvenile is identified as a "suspect," the requestor, in essence, is asking that the city compile these juvenile's 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)*. Thus, a compilation of the juvenile's criminal history records is excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy. Of course, the common-law right to privacy would not prevent the city from releasing a compilation of criminal history records to the juvenile or his representative. *See Gov't Code § 552.023*. Therefore, we will also address your specific arguments against disclosure of the records.

You claim that the submitted records are excepted from disclosure under section 552.101 in conjunction with provisions of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). This office has concluded that section 58.007 of the Family Code, as enacted by the Seventy-fourth Legislature, does not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential, effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). It chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code.

The submitted documents that are not marked with a red tab relate to conduct that occurred after September 1, 1997. Therefore, these documents are made confidential by section 58.007 of the Family Code, and they cannot be released to the requestor.<sup>1</sup> On the other hand, the documents marked with a red tab relate to conduct that occurred in June, 1997. Thus, the documents are not deemed confidential by either the former section 51.14(d) or the current section 58.007 of the Family Code.

You also contend that five of the submitted documents are deemed confidential by section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides 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.

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<sup>1</sup>You also contend that some of these documents are excepted from disclosure pursuant to section 552.108 of the Government Code. However, because we find that these documents are deemed confidential by section 58.007 of the Family Code, we need not address your section 552.108 claim.

We do not believe that the five documents constitute “files, reports, records, communications, and working papers used or developed” in an investigation of suspected child abuse or neglect. Thus, we conclude that these documents are not protected from disclosure by section 261.201(a) of the Family 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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 114521

Enclosures: Submitted documents

cc: Mr. Ken Morris  
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(w/o enclosures)