



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 21, 1998

Ms. Tammy Harrison  
Assistant District Attorney  
Dallas County  
Frank Crowley Courts Building, LB 19  
Dallas, Texas 75207-4399

OR98-1284

Dear Ms. Harrison:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115445.

The Dallas County District Attorney's Office (the "district attorney") received a request for all documents relating to *State of Texas v. Jerry Lomas Hernandez*. You contend that some of the requested documents are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed a representative sample of the documents at issue (exhibits 1 through 5).<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality statutes such as section 58.007 of the Family Code. You ask whether exhibits 1 and 2, two witness statements, are confidential pursuant to section 58.007. Section 58.007 makes certain juvenile law enforcement records confidential.<sup>2</sup> Family Code section 51.04(a) states

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>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

that the Juvenile Justice Code, Title 3 of the Family Code, "covers the proceedings in all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a person who was a child within the meaning of [Title 3] at the time he engaged in the conduct." Thus, section 58.007 deems confidential law enforcement records from all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a child. Exhibits 1 and 2 are not the types of records that section 58.007 covers. Therefore, we conclude that exhibits 1 and 2 are not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.108 of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An 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 is excepted from the requirements of Section 552.021 if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of [s]ection 552.021 information that is basic information about an arrested person, an arrest, or a crime.

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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.

You ask whether the witness statements labeled exhibits 1 and 2 are excepted from disclosure under section 552.108, but you have not demonstrated that section 552.108 is applicable to the statements. *See Gov't Code § 552.301(b)(1)*. Therefore, we conclude that the district attorney may not withhold the statements from disclosure under section 552.108.

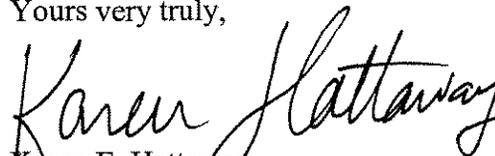
You also contend that exhibit 3, a prosecuting attorney's handwritten notes, are excepted from disclosure under section 552.108. Because you indicate that the notes were prepared by an attorney representing the state in anticipation of criminal litigation, we conclude that you may withhold these notes from disclosure under section 552.108(a)(3)(A).

Exhibit 4 contains criminal history information. You contend that this information is confidential by law. We agree. Criminal history information obtained from the National Crime Information Center or the Texas Crime Information Center is generally confidential by law. 28 C.F.R. § 20; Gov't Code § 411.083. Criminal history information that has been compiled by a governmental entity is protected by the common-law right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Therefore, the district attorney must withhold criminal history information from disclosure under section 552.101 of the Government Code as information deemed confidential by law.

Finally, you contend that exhibit 5 is excepted from disclosure because it identifies a grand jury witness. Article 20.02(a) of the Code of Criminal Procedure states that "[t]he proceedings of the grand jury shall be secret." Thus, information that reveals the proceedings of the grand jury is confidential under article 20.02(a) of the Code of Criminal Procedure and excepted from disclosure under section 552.101 of the Government Code. Additionally, in Open Records Decision No. 513 (1988), this office concluded that grand juries are not subject to the Open Records Act, and that records within the constructive possession of grand juries are not public information subject to disclosure under the Open Records Act. *See Gov't Code § 552.003*. Based upon these considerations, we conclude that the district attorney must withhold exhibit 5 from disclosure.

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# 115445

Enclosures: Submitted documents

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