



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 26, 1998

Capt. Robert Taylor
Amarillo Police Department
200 S.E. Third Avenue
Amarillo, Texas 79101-1514

OR98-1305

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# 115481.

The Amarillo Police Department (the "department") received a request for "any records you may have on a [named individual]." You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. You also suggest that section 552.101 of the Government Code may apply to the requested information. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from required public disclosure information that is confidential by law, and encompasses information protected under common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public under common-law privacy when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 1. In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also* Open Records Decision No. 343 (1982) (information relating to drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress).

In addition, to the extent that the requestor is asking for all records in which the named individual is identified as a "suspect," the requestor, in essence, is asking that the department compile that individual'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). We believe that some of the submitted documents must be withheld because of a common-law right of privacy. We have marked these documents accordingly.

Section 552.101 also excepts from disclosure information made confidential by statute. Section 51.14(d) of the Family Code was repealed by the Seventy-fourth Legislature. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590 (current version at Family Code § 58.007 *et seq.*). However, the repealing bill provides that “[c]onduct that occurs before 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.* § 106, 1995 Tex. Gen. Laws at 2591; Open Records Decision No. 644 (1996) at 5. One of the submitted records involves juvenile conduct that occurred before January 1, 1996.

At the time the conduct occurred, the applicable law in effect was Family Code section 51.14 which provided, in pertinent part:

(d) 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.

Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590. In Open Records Decision No. 181 (1977) at 2, this office held that former section 51.14(d) excepts police reports which identify juveniles or furnish a basis for their identification. *See also* Open Records Decision No. 394 (1983) at 4-5 (applying former Fam. Code § 51.14(d) to “police blotter” and related information). You do not indicate that the offense report at issue here relates to charges for which the department transferred the juvenile under section 54.02 of the Family Code¹ to a criminal court for prosecution, or that

¹Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476-77, *amended by* Act of May 19, 1975, 64th Leg., R.S., ch. 693, §§ 15-16, 1975 Tex. Gen. Laws 2152, 2156-57 (adding subsecs. (m), (j), (k), (l)), *amended by* Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen. Laws 309 (amending subsecs. (a), (h), (j)).

article 15.27 of the Code of Criminal Procedure² applies. Moreover, it appears that none of the exceptions to former section 51.14(d) apply to the requestor. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)). Accordingly, we conclude that the department must withhold the juvenile records that you have marked under section 552.101 of the Government Code as information deemed confidential by law.

As we resolve this matter under section 552.101, we need not address your other arguments against 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref.: ID# 115481

Enclosures: Submitted documents

cc: Ms. Kathy Garrison
Garrison Legal Services
P.O. Box 1574
Amarillo, Texas 79105
(w/o enclosures)

²Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.