



January 18, 2002

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

OR2002-0298

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157542.

The El Paso Police Department (the "department") received a "Request For Inter-agency Transfer of Records" from a representative of the Texas Department of Public Safety (the "DPS") for certain records pertaining to a named individual who has applied for employment with the DPS.¹ You inquire whether the department is authorized to release the requested information to the DPS or whether the records at issue, which consist of juvenile law-enforcement records, must be withheld pursuant to section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code.

The juvenile records at issue pertain to an offense allegedly committed by a juvenile in November, 1981. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code 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 [pertaining to juvenile conduct] 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;

¹You have submitted to this office in connection with the records request an authorization executed by the job applicant to release "all records concerning myself to any duly authorized agent of the [DPS], whether the said records are of a public, private, or confidential nature."

- (2) an attorney for a party to the proceeding; and
- (3) *law-enforcement officers when necessary for the discharge of their official duties.* [Emphasis added.]

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 continue to be confidential under that section.² Because the records at issue pertain to juvenile conduct that occurred prior to January 1, 1996, we conclude that the release of these records is governed by section 51.14(d) of the Family Code.

Section 51.14(d)(3) specifically authorizes the release of juvenile records to “law-enforcement officers when necessary for the discharge of their official duties.” In this instance, although the release of the records at issue would not be in the furtherance of a law enforcement matter, we nevertheless believe that conducting a background investigation of a particular job applicant constitutes an “official” administrative duty of DPS personnel. *See* 37 T.A.C. § 1.36 (“It is the policy of the [DPS] to hire the best qualified people to perform the many tasks necessary in providing high quality service in the field of law enforcement administration and other areas of public safety.”) Accordingly, assuming the requestor in fact is a “law-enforcement officer” whose official duty is to conduct background investigations, we conclude that the department is authorized under section 51.14(d)(3) of the Family Code to “inspect” the information at issue to the requestor.

You also inquire whether the right to “inspect” the records at issue includes the right to obtain copies of those records. In Attorney General Opinion DM-334 at 8 (1995), this office concluded that section 51.14(a) does not prohibit the release of copies of juvenile court records to individuals otherwise entitled to access to such records. In accordance with that opinion, we conclude here that section 51.14(d) does not prohibit the release of copies of such records in this instance. Unlike the types of records at issue in Attorney General Opinion DM-334, the release of copies of juvenile records held by law-enforcement agencies does not depend on the discretion of the juvenile court. We therefore conclude that in this instance, the right to “inspect” the juvenile records at issue includes the right to obtain copies of those records. Accordingly, the department must provide the requestor with copies of the requested records.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the

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

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/RWP/sdk

Ref: ID# 157542

Enc: Submitted documents

c: Mr. Lee Sneed
Texas Department of Public Safety
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El Paso, Texas 79936
(w/o enclosures)