



January 22, 2002

Mr. T. Daniel Santee II
Assistant City Attorney
City of Abilene
Post Office Box 60
Abilene, Texas 79604

OR2002-0314

Dear Mr. Santee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157593.

The City of Abilene (the "city") received a request for information relating to four named individuals and two street addresses. You state that the city has released some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information concerning a particular individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993). In this instance, the request is for unspecified law enforcement records relating to four named individuals. This request for information implicates these individuals' privacy interests. Therefore, to the extent that the city maintains law enforcement records

that list any of these individuals as a criminal suspect, arrestee, or defendant, the city must withhold all such records in their entirety under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Section 552.101 also encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 58.007 of the Family Code. Section 58.007 provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) is applicable only to records of juvenile conduct that occurred on or after September 1, 1997.¹ The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred.² Having reviewed the incident reports for which you claim an exception under section 552.101, we conclude that section 58.007(c) of the Family Code is not applicable to any of this information.

We note, however, that some of the submitted incident reports are confidential under former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records.³ Law enforcement records pertaining to conduct that occurred before January 1, 1996 are governed

¹See Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996).

²See Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code).

³Former section 51.14(d) provided that "law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public[.]" See Open Records Decision No. 644 at 2 (1996).

by former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). We have marked the incident reports that are confidential under former section 51.14(d) of the Family Code. The city must withhold these reports in their entirety under section 552.101 of the Government Code as information made confidential by law.

The city also raises section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]” A governmental body that raises section 552.108 must reasonably explain, if the responsive information does not supply an explanation on its face, how and why this exception is applicable to the information. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) protects information relating to a concluded investigation or prosecution that did not result in a conviction or a deferred adjudication. *See* Open Records Decision No. 216 (1978) (addressing applicability of statutory predecessor to closed cases). You state that each of the remaining incident reports relates to an investigation that did not result in a conviction or deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is applicable to the remaining reports. Therefore, the city may withhold most of the information in these reports under section 552.108.

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 531 S.W.2d at 186-87. The city must release basic information under section 552.108(c), including a detailed description of the offense, even if that information is not actually located on the front page of the report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed to be public by *Houston Chronicle*).

We note, however, that part of the basic information in one report is confidential under section 552.101 in conjunction with common-law privacy. Common-law privacy protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information 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). This office has since concluded that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999). We have marked the information that the city must withhold under section 552.101.

In summary, this request for unspecified law enforcement records implicates the privacy rights of the four individuals named in the request. To the extent that the city maintains any records that list any of these individuals as a suspect, arrestee, or defendant, the city must withhold all such records in their entirety under section 552.101 of the Government Code in conjunction with *Reporters Committee*. Law enforcement records pertaining to juvenile conduct that occurred before January 1, 1996, are confidential under former section 51.14(d) of the Family Code and must also be withheld under section 552.101. The city may withhold the remaining incident reports under section 552.108(a)(2) of the Government Code, but must release basic information, except for the information that is protected by common-law privacy. The city must also withhold that information under section 552.101.

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 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).

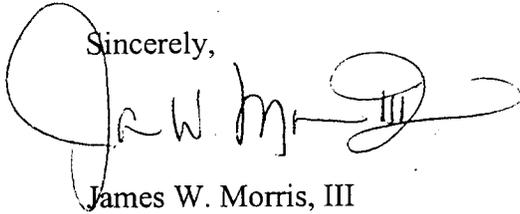
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 157593

Enc: Submitted documents

c: Ms. Leslie A. O'Loughlin
350 Curry Lane, #805
Abilene, Texas 79606
(w/o enclosures)