



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

March 19, 2003

Ms. Michele Austin  
Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

OR2003-1879

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178291.

The City of Houston (the "city") received a request for all police papers and records pertaining to a murder case. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

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 provisions. 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). Section 51.14(d) provides, in pertinent part:

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 . . . .

The records you have submitted concern juvenile conduct that occurred prior to January 1, 1996. Although it appears that the juvenile crime records involve a charge for which at least one juvenile was transferred under section 54.02 of the Family Code, it is not apparent that

all of the juveniles were transferred under section 54.02. Furthermore, none of the exceptions to section 51.14(d) apply here. Therefore, these records are confidential under the former section 51.14(d) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.<sup>1</sup>

The requestor argues that at the time of the investigation, the Houston police department established its entire investigative file as public record and waived the juveniles' right to privacy. Section 552.007 of the Government Code states:

(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) Public information made available under Subsection (a) must be made available to any person.

Because the information in question is confidential pursuant to former section 51.14(d) of the Family Code, it may not now be released to the public. A governmental body does not have the discretion to release confidential information. *See* Gov't Code § 552.007(a).

To summarize, we conclude that the information must be withheld under section 552.101 in conjunction with former section 51.14(d) of the Family Code.

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

---

<sup>1</sup>As we are able to make this determination, we need not address your remaining arguments against disclosure.

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 Dep't of Pub. 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 178291

Enc. Submitted documents

c: Kevin McAllister  
4131 Garden Avenue  
Los Angeles, CA 90039  
(w/o enclosures)