



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2009

Ms. Cary Grace  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2009-08621

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 347305.

The Austin Police Department (the "department") received a request for offense reports, supplemental offense reports, and field notes related to an investigation for a murder that took place on October 22, 1993. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note and you acknowledge the department has failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information is public and must be released unless a governmental body demonstrates a compelling reason to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Section 552.101 of the Government Code can provide a

compelling reason to overcome this presumption; therefore, we will consider whether this section requires the department to withhold the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses former section 51.14(d) of the Family Code. 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. *See* Open Records Decision No. 181 (1977) (concluding former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile criminal conduct occurring before January 1, 1996, are governed by former section 51.14 of the Family Code, which was continued in effect for that purpose.<sup>1</sup> Section 51.14 applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Former section 51.14 provided in relevant part as follows:

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

*Id.* § 51.14 (repealed 1995). In this instance, the submitted information involves juvenile conduct of a child other than the requestor's client that occurred prior to January 1, 1996. Therefore, we determine former section 51.14(d) is applicable to the submitted information. *See id.* § 51.04(a) (Title 3 covers cases involving delinquent conduct engaged in by a child).

The requestor states his client signed an authorization form that would allow him access to the records at issue. Section 51.14(d)(2) states disclosure is permitted to "an attorney for a party to the proceeding." However, we believe section 51.14(d)(2) provides for inspection only by the attorney representing a party in the proceeding subject to the Family Code. Because the requestor's client was not a party to a Family Code proceeding, if any, related

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<sup>1</sup>Act of May 27, 1995, 74<sup>th</sup> Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591.

to this matter, the requestor does not have a right of access to the information pursuant to section 51.14(d). Thus, the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton  
Assistant Attorney General  
Open Records Division

EBS/rl

Ref: ID# 347305

Enc. Submitted documents

c: Requestor  
(w/o enclosures)