

Year 2004 Case Summaries

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Attorney General says police may not release to school district the names of juveniles cited for minor in possession [ORD-680] (04-1-24).

On November 25, 2003, the Texas Attorney General issued an opinion in which he stated that the Grand Prairie police department could not release to the Grand Prairie School District the names of juveniles cited for minor in possession of alcohol.

04-1-24. Attorney General Opinion No. ORD-680, 2003 WL 23273818, 2003 Tex.Ag.Lexis ____ (11/25/03) Texas Juvenile Law (5th Ed. 2000).

Re: Whether the Grand Prairie Municipal Police Department may release to the Grand Prairie Independent School District the name, address, and date of citation of each school age resident of the district who is cited by the department for consuming or possessing alcohol in violation of section 106.04 or 106.05 of the Texas Alcoholic Beverage Code. (ORQ 61)

The Honorable Harold Dutton
Chair, Committee on Juvenile Justice and Family Issues
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768 0562

Dear Representative Dutton:

Your predecessor as Chair of the Committee on Juvenile Justice and Family Issues asked whether the Grand Prairie Municipal Police Department (the "police department") may release to the Grand Prairie Independent School District (the "school district") on a recurring basis the name, address, and date of citation of each school-age resident of the district who is cited by the police department for consuming or possessing alcohol in violation of section 106.04 or 106.05 of the Texas Alcoholic Beverage Code. See Tex. Alco. Bev. Code Ann. ss 106.04, 106.05 (Vernon Supp. 2003).

I. Background

In August 2001, the Grand Prairie School Board and the Grand Prairie City Council passed a joint resolution establishing a policy of mutual cooperation between the two entities in their efforts to reduce the incidence of underage drinking in Grand Prairie. As part of this cooperative effort, the police department seeks to share with the school district information about certain alcohol-related arrests of school district students, specifically information from citations for violations of sections 106.04 and 106.05 of the Alcoholic Beverage Code. On behalf of the City of Grand Prairie, your predecessor asked whether the release of the information under these circumstances would violate section 58.007(c) of the Family Code, a provision that makes confidential juvenile law enforcement records and specifies who has access to the records. See Tex. Fam. Code Ann. s 58.007(a) (Vernon 2002).

Section 58.007 of the Family Code concerns the physical records of a child who is involved in the juvenile justice system. See *id.* The provision applies only to the inspection and maintenance of a physical record or file concerning a child and the storage of information, by electronic means or otherwise, concerning the child from which a physical record or file could be generated. See *id.* Subsection (c) prohibits the disclosure to the public of law enforcement records and files concerning a child:

(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.

Id. s 58.007(c). Thus, in addition to prohibiting the release to the public of the information it covers, the statute also requires law enforcement agencies to maintain the information in a certain way: (1) in separate files from adult files; (2) under separate controls from controls for access to the adult data if the data are maintained in a computer system with adult files; and (3) on a local basis only and not sent to a central database, except as otherwise provided by subchapter B. See *id.*; *Op. Tex. Att'y Gen. No. DM 435 (1997)* at 2.

The school district argues that section 58.007(c) does not apply to information on citations for violation of section 106.04 or 106.05 of the Alcoholic Beverage Code because that information is not "juvenile justice information" under section 58.104(a) of the Family Code. In the alternative, the school district contends that even if section 58.007(c) covers the information, the police department nevertheless may disclose it to the school district based on the interagency transfer doctrine, a doctrine that in some situations permits the transfer of confidential information between governmental bodies without violating its confidential character.

II. Relatedness of Sections 58.007 and 58.104 of the Family Code

The school district contends that section 58.104(a) of the Family Code, which lists the information in the state juvenile justice system computerized database, limits the kind of information covered by section 58.007(c). The Texas Department of Public Safety ("DPS") must maintain a database for a computerized system of juvenile justice information. See *Tex. Fam. Code Ann. s 58.102 (Vernon 2002)*. Section 58.104 sets out the information that DPS must include in the database. Section 58.104(a) states that

subject to Subsection (f), the juvenile justice information system shall consist of information relating to delinquent conduct committed by a juvenile offender that, if the conduct had been committed by an adult, would constitute a criminal offense other than an offense punishable by a fine only.

Id. s 58.104. Section 58.104(a) then goes on to specify the kinds of information the system should include. The school district argues that section 58.007 only applies to the juvenile justice information found in section 58.104, that is, information relating to delinquent conduct committed by a juvenile offender that, if committed by an adult, would constitute a criminal offense other than an offense punishable by a fine only. Therefore, because the conduct of a child offender of sections 106.04 and 106.05 if committed by an adult does not constitute a criminal offense, the school district argues section 58.007 does not cover the police department's records of such violations.

We find no indication in the language of section 58.007 or elsewhere in chapter 58 of the Family Code that the requirement in section 58.104(a) for the types of information that DPS must collect for inclusion in the central state juvenile justice information system is intended to limit the kinds of records subject to section 58.007. The two provisions do not appear to be related to each other. They are found in different subchapters of chapter 58 of the Family Code. Section 58.007 is included in subchapter A, the subchapter of chapter 58 that concerns the records of juvenile offenders generally. Section 58.104 is in subchapter B, the subchapter that pertains to the central state juvenile justice information system. In subchapter A, we find numerous provisions concerning the physical records of a child, including provisions concerning the collection of records of children, the photographs and fingerprints of children, fingerprints or photographs for comparison in investigation, fingerprints or photographs to identify runaways, sealing of records, confidentiality of treatment records, inter-agency sharing of certain records, and the destruction of certain physical records and files. See *id.* ss 58.001 .0071. In contrast, in subchapter B, we find provisions that require DPS to maintain a database for a computerized system of juvenile justice information, provisions that give the purpose of the system, provisions for the confidentiality of the system information, and other provisions providing for the operation of the system. See *id.* ss 58.102 .104, 58.106.

Moreover, the provisions in subchapter A, and section 58.007 in particular, are not by their terms limited to the juvenile justice information addressed in subchapter B. By its plain language, section 58.007 concerns a broad category of information: "a physical record or file... and the storage of information concerning a child." *Id.* s 58.007(a). Similarly, section 58.007(c) refers to records "concerning a child": "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." *Id.* s 58.007(c). The Juvenile Justice Code, chapters 51 through 60 of the Family Code, covers cases involving two categories of conduct engaged in by a child: delinquent conduct and conduct in need of supervision, as those terms are defined in the Code. See *id.* s 51.04. Thus, it is reasonable to conclude that "records and files concerning a child" includes records of allegations that a child engaged in conduct described in either one of these categories and not just delinquent conduct that, if committed by an adult, would constitute a criminal offense other than an offense punishable by a fine only. See *id.* s 58.007(c).

Furthermore, the language of section 58.007 makes clear that the two provisions were intended to operate separately from each other. Section 58.007 states that it does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B. See *id.* s 58.007(a). Furthermore, section 58.007(c)(3) states that "the law enforcement records and files concerning a child... may not be disclosed to the public and shall be maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B." *Id.* s 58.007(c)(3); see also *id.* s 58.102 (c) (prohibiting the department from collecting or retaining information relating to juvenile where prohibited under chapter 58). Thus, the implication of section 58.007(c)(3) is that "law enforcement records and files concerning a child" that "must be maintained on a local basis only" must refer to information concerning a child that is not subject to subchapter B, that is, law enforcement information concerning all other cases covered by the Juvenile Justice Code.

In addition, we are unaware of any reason the legislature would treat differently the confidentiality of the law enforcement records of a child whose conduct if committed by an adult would constitute a criminal offense from the records of a child who commits other unlawful conduct, such as conduct indicating a need for supervision. Affording the same confidentiality to each type of misconduct effectuates one of the public purposes of the Juvenile Justice Code, the removal, where appropriate, of the taint of criminality from children committing unlawful acts. See *id.* s 51.01(2)(B). Without a link between the two statutes by language or otherwise, we believe section 58.007 operates independently from section 58.104. Consequently, section 58.104 does not limit the information section 58.007(c) covers to the information that DPS must include in the juvenile justice information system.

Law Enforcement Records Concerning a Child's Violation of Section 106.05 or 106.04 of the Alcoholic Beverage Code

As we have already stated, the Juvenile Justice Code covers the proceedings in all cases involving delinquent conduct or conduct indicating a need for supervision, as those terms are defined in the Code. See *id.* s 51.03(a) (b). Such conduct can only be committed by a "child." See *id.* Section 58.007 covers "law enforcement records" of any school district student who is a "child" as defined in section 51.02. See *id.* s 58.007. A "child" means a person who is ten years of age or older and under 17, or 17 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age. See *id.* s 51.02(2). The status as a "child" is determined by the age of the person on the date of the commission of the alleged offense. See *id.* s 51.04(a).

Section 106.04 of the Alcoholic Beverage Code, consumption of alcohol by a minor, and section 106.05 of the Alcoholic Beverage Code, possession of alcohol by a minor, are Class C misdemeanors if committed by a child. See *Tex. Alco. Bev. Code Ann.* s 106.071 (Vernon Supp. 2003). A Class C misdemeanor is punishable by a fine not to exceed \$500. See *Tex. Pen. Code Ann.* s 12.23 (Vernon 2003). One of the definitions of "conduct indicating a need for supervision" is conduct which violates a penal law of the State of Texas of the grade of misdemeanor that is punishable by fine only but only if the case was first filed in municipal or justice court and then was transferred by that court to the juvenile court. See *Tex. Fam. Code Ann.* s 51.03 (b), (f) (Vernon 2002). Thus, here, if the individual is of the age of a "child" as defined by section 51.02 of the Family Code, the juvenile court has jurisdiction over the individual for a single alleged violation of section 106.04 or 106.05 of the Alcoholic Beverage Code if the case was first filed in municipal or justice court and transferred by that court to the juvenile court. See *id.* ss 51.03(b)(1), 51.04; see also *id.* s 54.047 (authorizing juvenile court to impose sanctions where court finds child violates sections 106.04 and 106.05 of Alcoholic Beverage Code).

We note that, except for public intoxication, fineable misdemeanors committed by a child, such as violations of sections 106.04 and 106.05, can be handled in municipal or justice courts rather than the juvenile court. Municipal and justice courts have both discretionary and mandatory authority to transfer to a juvenile court fineable only cases involving a child. Municipal and justice courts may transfer any such case to the juvenile court if the offender is a child and must transfer the case if the child has two prior convictions of fineable only cases unless the court has implemented a case manager system under article 45.054 of the Code of Criminal Procedure. See *id.* ss 51.03(f); 51.08(b), (d); see also *Tex. Gov't Code Ann.* s 29.003(b)(2) (Vernon Supp. 2003) (municipal court concurrent jurisdiction with justice court of cases arising under chapter 106 of Alcoholic Beverage Code); *Tex. Code Crim. Proc. Ann.* art. 4.14 (b)(2) (same); *Tex. Pen. Code Ann.* s 8.07(4) (Vernon 2003); *Tex. Fam. Code Ann.* s 51.08(c) (requiring court to notify juvenile court of final disposition of any matter for which court does not waive its jurisdiction under section 51.08(b)); see generally Robert O. Dawson, *Texas Juvenile Law: An Analysis of Juvenile Statutory and Case Law for Texas Juvenile Justice Officials* through the 76th Texas Legislature, ch. 4 (5th ed. 2000 & Supp. 2001) (discussing "shadow juvenile justice system" under which municipal and justice courts dispose of juvenile cases). We understand that the school district seeks the information before the case is heard in a court so that the school district can intervene earlier in its efforts to steer students away from drinking alcohol. Because a child's alleged violation of section 106.04 or 106.05 of the Alcoholic Beverage Code is a matter that can be handled in juvenile court as a "child in need of supervision" case, section 58.007(c) applies to the law enforcement records concerning the case. See *Tex. Fam. Code Ann.* ss 51.03(b)(1)(A), 51.04, 58.007(c) (Vernon 2002).

Thus, in compliance with section 58.007(c), the police department must not release information from the records of a child's alleged violation of section 106.04 or 106.05 of the Alcoholic Beverage Code, including a child's name and address and the date of citation. Furthermore, the police department must keep records of such violations separate from its adult files and, if maintained in a computer

system, under separate controls from the controls used to access electronic data concerning adults, and maintained on a local basis only. See *id.* s 58.007(c).

IV. Interagency Transfer Doctrine

Your predecessor asked whether, under the interagency transfer doctrine, the police department may nevertheless release to the school district the names, addresses, and dates that tickets were issued to school age individuals for section 106.04 or 106.05 violations. For many years, this office has recognized that it is the public policy of Texas that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. In adherence to this policy, this office has acknowledged in numerous opinions and decisions that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. See, e.g., *Op. Tex. Att'y Gen. Nos. GA 0055 (2003), H 836 (1976), M 713 (1970); Tex. Att'y Gen. ORD 667 (2000), ORD 661 (1999)*. However, this office has also found that an interagency transfer is prohibited where a confidentiality statute enumerates specific entities to which release of confidential information is authorized and where the receiving agency is not among the statute's enumerated entities. See *Op. Tex. Att'y Gen. Nos. GA 0055 (2003), JM 590 (1986); Tex. Att'y Gen. ORD 655 (1997)*. This is so because where the statute lists the entities authorized to receive confidential information, a release to an unlisted entity would be contrary to the statute's plain language. The legislature's express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others. See *Op. Tex. Att'y Gen. No. JM 590 (1986) at 4*.

In this situation, the interagency transfer doctrine cannot operate to allow the police department to transfer the confidential juvenile information to the school district. The statute enumerates specific entities for the transfer and inspection of confidential information, but a school district is not among the statute's enumerated entities. Section 58.007(c) specifies a permissible transfer of confidential information to the Texas Department of Criminal Justice with the phrase, "[e]xcept as provided by Subsection (d)." *Tex. Fam. Code Ann. s 58.007(c) (Vernon 2002)*. Subsection (d) permits the transfer of law enforcement files and records of a person who is transferred from the Texas Youth Commission to the institutional division or the pardons and paroles division of the Texas Department of Criminal Justice. See *id.* s 58.007(d). In addition, section 58.007(e) permits a juvenile justice agency and a criminal justice agency to inspect law enforcement records and files concerning a child. See *id.* s 58.007(e); see also *id.* s 58.101 (defining "juvenile justice agency"); *Tex. Gov't Code Ann. s 411.082 (Vernon 1998)* (defining "criminal justice agency"). Also, if a child has been reported missing by a parent, guardian, or conservator of that child, information about the child may be forwarded to and disseminated by the Texas Crime Information Center and the National Crime Information Center. See *Tex. Fam. Code Ann. s 58.007(f) (Vernon 2002)*; see also 28 U.S.C. s 534(a)(3) (2001) (requiring Federal Bureau of Investigation's National Crime Information Center to include information that would assist in location of any missing person). Thus, to permit the transfer to the school district would be contrary to the intent of section 58.007 that the confidentiality for juvenile law enforcement records exists in all cases except the three set out in the statute.

Furthermore, our conclusion that section 58.007(c) does not permit the department to transfer law enforcement records to the school district is supported by other legislation. In 1993, the Seventy third Legislature recognized that the interagency transfer doctrine was not applicable to juvenile law enforcement records requested by a school district when it passed House Bill 23, which added article 15.27 of the Code of Criminal Procedure. Article 15.27 requires law enforcement agencies to notify school officials about an arrest or referral of a child for violation of certain offenses. *Tex. Code Crim. Proc. Ann. art. 15.27 (Vernon Supp. 2003)*. Because juvenile law enforcement records were confidential and as part of an effort to prevent future juvenile violence, House Bill 23 was enacted to authorize the exchange of information about certain juvenile criminal activity between law enforcement agencies and schools. See *Op. Tex. Att'y Gen. No. DM 294 (1994) at 2 4* (discussing legislative intent of House Bill 23; citing pertinent analysis). The duty to notify school officials under article 15.27 applies only to the offenses listed in subsection (h) of the article: any felony offense and certain misdemeanor offenses, which does not include violations of section 106.04 or 106.05 of the Alcoholic Beverage Code. See *Tex. Code Crim Proc. Ann. art. 15.27(h) (Vernon Supp. 2003)*. Thus, article 15.27 is an exception to the confidentiality of section 58.007(c) that permits law enforcement agencies to disclose information about certain violent offenses to school districts. Article 15.27 is significant to our discussion here because the Seventy third Legislature in 1993 understood the existing law as we do now as prohibiting a law enforcement agency from transferring juvenile records to a school district.

V. Conclusion

No provision in the Juvenile Justice Code or any other law provides that a law enforcement agency may release to a school district law enforcement records about an arrest or referral of a child for violation of section 106.04 or 106.05 of the Alcoholic Beverage Code. Thus, because section 58.007 expressly provides for the transfer or inspection of juvenile law enforcement records only to certain entities in three limited situations, and because neither section 58.007 nor article 15.27 of the Code of Criminal Procedure allows the release to the school district of law enforcement records of a child for a violation of either section 106.04 or 106.05 of the Alcoholic Beverage Code, we must construe section 58.007 as prohibiting the police department from releasing to the school district information in law enforcement records of a child's violation of either section 106.04 or 106.05, including the child's name and address, and the date of citation. Of course, section 58.007 is inapplicable to the law enforcement records of section 106.04 or 106.05

violations by a resident who is not a "child." Consequently, the police department may release to the school district records of section 106.04 or 106.05 violations that are not subject to section 58.007.

SUMMARY

Section 58.007(c) of the Family Code prohibits the Grand Prairie Police Department from releasing to the Grand Prairie Independent School District the name, address, and date of citation of an individual who is cited by the police department for consuming or possessing alcohol in violation of section 106.04 or 106.05 of the Texas Alcoholic Beverage Code when the individual is a "child" as defined in Family Code section 51.02(2).

Very truly yours,

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