
YEAR 2005 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

[2005 Summaries](#) [2004 Summaries](#) [2003 Summaries](#) [2002 Summaries](#) [2001 Summaries](#) [2000 Summaries](#) [1999 Summaries](#)

Texas Attorney General concludes Texas Department of Family and Protective Services cannot access juvenile records under Family Code.(05-2-24)

On March 15, 2005, the Texas Attorney General opined that the Texas Department of Family and Protective Services is neither a "juvenile justice agency" or a "criminal justice agency" and can not receive reports restricted under *section 58.007 of the Family Code*.

05-2-24. Texas Attorney General Opinion No. OR 2005-02217, 2005 Tex.AG Lexis 2316 (3/15/05).

Re: 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 # 220028.

Mr. Charles D. Olson
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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 # 220028.

The Bellmead Police Department (the "department"), which you represent, received a request from the Texas Department of Family and Protective Services for case report # 03-07622, as well as all information pertaining to two named individuals. You question whether the requested 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of [*2] which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. *Id.* at 683. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters*

Comm. for Freedom of the Press, 489 U.S. 749 (1989).

In part, the present request requires the department to compile unspecified police records concerning the two individuals at issue. Accordingly, we find that this portion of the request implicates these individuals' rights to privacy. Thus, to the extent the department [*3] maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common law privacy pursuant to the decision in *Reporters Committee*. However, we note that when a requestor asks for information regarding a specified incident, the request does not implicate the privacy concerns expressed in *Reporters Committee*. Therefore, case report # 03-07622 is not confidential under common law privacy in conjunction with *Reporters Committee*.

In addressing the documents at issue, we find that some of the information is confidential under common law privacy. *See Indus. Found., 540 S.W.2d at 683*. Thus, the department must withhold this information, which we have marked, under section 552.101 in conjunction with common law privacy.

Section 552.101 also encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under *section 58.007 of the Family Code*. The relevant language [*4] of section 58.007 reads as follows:

(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). Offense report # 03-02261 involves a runaway, which is conduct falling within the scope of section 58.007. *See id.* § 51.03(b) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return"). Thus, offense report # [*5] 03-02261 is confidential under section 58.007(c).

Section 58.007 also provides, however, that "law enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by *Section 58.101 [of the Family Code]* and a criminal justice agency as that term is defined by *Section 411.082, Government Code*." *Id.* § 58.007(e). *Section 58.101(5) of the Family Code* defines a "juvenile justice agency" as an agency that has custody or control over juvenile offenders. *Section 411.082(3) of the Government Code* defines a "criminal justice agency" as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice" or "a nongovernmental railroad or campus police department that has obtained an originating agency identifier from the Federal Bureau of Investigation." *Gov't Code § 411.082(3)(A), (B)*.

[*6]

We have no information to allow us to conclude that the Texas Department of Family and Protective Services is either a "juvenile justice agency" for purposes of *section 58.101 of the Family Code* or a "criminal justice agency" for purposes of *section 411.082 of the Government Code*. Accordingly, the department must withhold offense report # 03-02261 under *section 552.101 of the Government Code* in conjunction with *section 58.007 of the Family Code*.

Section 552.101 also encompasses chapter 560 of the Government Code. The submitted information contains fingerprint information. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See Gov't Code § 560.001* (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (providing that biometric identifiers in possession [*7] of governmental body are exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with *section 560.003 of the Government Code*.

We note that the submitted information contains social security numbers. A social security number is excepted from required public disclosure under *section 552.101 of the Government Code* in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 (1994)*. We have no basis for concluding that any social security number in the submitted information is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of [*8] that federal provision. We caution, however, that *section 552.352 of the Government Code* imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

The information at issue also contains Texas motor vehicle record information. *Section 552.130 of the Government Code* provides in relevant part the following:

- (a) Information is excepted from the requirements of Section 552.021 if the information relates to:
 - (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
 - (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. The department must withhold the Texas motor vehicle record information we have marked under section 552.130.

Finally, we note that the interagency transfer doctrine provides that information may be transferred between [*9] 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 Attorney General Opinion. Nos. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000)*. But an interagency transfer of confidential information is prohibited where a confidentiality statute enumerates specific entities to which release of confidential information is authorized, and the requesting agency is not among the statute's enumerated entities. *See Attorney General Opinion DM-353 at 4 n.6 (1995); Open Records Decision No. 661 at 3 (1999)*. Thus, under the interagency transfer

doctrine the department may release to the Texas Department of Family and Protective Services the submitted information that is confidential under common law privacy, the Texas motor vehicle record information excepted under *section 552.130 of the Government Code*, and social security numbers that were obtained or maintained by the originating governmental body pursuant to any provision of law enacted on or after October 1, 1990. However, the department may not [*10] release pursuant to the interagency transfer doctrine the information that is confidential under *section 58.007 of the Family Code* or *560.003 of the Occupations Code*. See, e.g., ORD 680 at 7 (interagency transfer doctrine cannot operate to allow police department to transfer information confidential under section 58.007 to governmental body that is not among statute's enumerated entities authorized to receive such information).

To conclude, pursuant to *section 552.101 of the Government Code*, the district must withhold offense report # 03-02261 under *section 58.007 of the Family Code* and the marked fingerprint under *section 560.003 of the Government Code*. Pursuant to the interagency transfer doctrine, the district has the discretion to release the information subject to *section 552.101 of the Government Code* in conjunction with the common law right to privacy, the social security numbers obtained or maintained by the originating governmental body pursuant to any provision of law enacted [*11] on or after October 1, 1990, and the marked Texas motor vehicle record information under *section 552.130 of the Government Code*. However, should the district choose not to exercise its discretion under the interagency transfer doctrine, the following exceptions apply: the district must withhold (1) under section 552.101, any unspecified law enforcement information depicting either individual at issue as a suspect, arrestee, or criminal defendant, (2) under section 552.101, the marked information that is confidential under common law privacy, and (3) under section 552.130, the marked motor vehicle record information. Finally, social security numbers may be confidential under federal law. The department must release the remaining information at issue.

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, [*12] 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to *section 552.221(a) of the Government Code* or file a lawsuit challenging this ruling pursuant to *section 552.324 of the Government Code* [*13]. If the governmental body fails to do one of these things, 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 [*14] 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.

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