

Juvenile Law Case Summaries

By

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Public housing authority not entitled to a juvenile incident report under the Open Records Act [OR2001-1563] (01-3-31).

On April 19, 2001, the Attorney General opined that a public housing authority is not entitled to receive under the Open Records Act a law enforcement incident report involving a juvenile. The report is made not subject to disclosure by Section 58.007 of the Family Code.

01-3-31. Attorney General Opinion No. OR2001-1563, 2001 WL 949066, 2001 Tex.Ag.Lexis ____ (4/19/01)[Texas Juvenile Law (5th Edition 2000)].

Ms. Stephanie H. Harris
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

Dear Ms. Harris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 146221.

The City of Paris Police Department (the "department") received a request from the Housing Authority of the City of Paris (the "authority") for reports with complaint numbers 200100657 and 200100668. You inform us that complaint number 200100668 does not exist. With regard to the other complaint number, you seek our opinion as to whether this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. We have considered your arguments and reviewed the submitted information.

Initially, with regard to the information requested which you assert does not exist, Chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); see Open Records Decision No. 452 (1986) (document not within chapter 552's purview if it does not exist when governmental body receives a request for it). Nor is a governmental body required to prepare new information to respond to a request for information. Open Records Decision No. 605 (1992), 572 (1990), 416 (1984). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 at 8 (1990). If the department holds information from which the requested information can be obtained, it must provide that information to the requestor unless it is otherwise excepted from disclosure.

With regard to the offense report at issue, we note that you received the request for information from another governmental body. Generally, a governmental body, such as the department, may transfer information to another governmental body subject to the Public Information Act without violating the confidentiality of the information or waiving exceptions to disclosure. See Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); Open Records Decision No. 661 at 3 (1999). However, interagency transfer of information is prohibited when a confidentiality statute enumerates specific entities to which the release of confidential information is authorized and the receiving governmental body is not among the statute's enumerated entities. See Attorney General Opinions DM-

353 at 4 n.6 (1995), JM-590 at 4-5 (1986); Open Records Decision No. 655 (1997).

In this case, the information at issue is a juvenile law enforcement record. 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 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.

We further note, however, that subsection (e) of 58.007 provides:

(e) 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 and a criminal justice agency as that term is defined by Section 411.082, Government Code.

Section 58.101 of the Family Code defines "juvenile justice agency" as "an agency that has custody or control over juvenile offenders." Section 411.082 of the Government Code defines "criminal justice agency" as "(A) 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 (B) a nongovernmental railroad or campus police department that has obtained an originating agency identifier from the Federal Bureau of Investigation." The authority is apparently not a "juvenile justice agency" or a "criminal justice agency."

The information at issue involves juvenile conduct that occurred after September 1, 1997. Because we find that the authority is not one of the enumerated entities entitled to inspect juvenile records pursuant to section 58.007(e) of the Family Code, we therefore conclude that the requested offense report in this case is confidential pursuant to section 58.007(c) of the Family Code. Thus, this offense report must be withheld from the authority under section 552.101 of the Government Code. [FN1] [FN1]. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

[Balance of letter dealing with disclosure and appeal procedures is omitted.]

Sincerely,

Michael A. Pearle
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Open Records Division

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