

Juvenile Law Case Summaries

By
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Criminal history records not subject to disclosure under common law privacy right and runaway children reports not subject to disclosure under Section 58.007 [OR2001-1704] (01-3-34).

On April 26, 2001, the Attorney General ruled in an open records opinion that criminal history information in the possession of a law enforcement agency is not subject to disclosure because of the common law right of privacy and that reports of runaway children are not subject to disclosure under Section 58.007 of the Family Code.

01-3-34. Attorney General Opinion No. OR2001-1704, 2001 WL 949223, 2001 Tex.Ag.Lexis ___ (4/26/01) [Texas Juvenile Law (5th Edition 2000)].

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 146474.

The Garland Police Department (the "department") received a request for records of a named individual, as well as for records relating to a specified address, to include a specific incident report. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common law right to privacy, and in conjunction with section 58.007 of the Family Code. We have considered the exception you claim and reviewed the submitted information. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Section 552.101 encompasses the doctrines of common law and constitutional privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). 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 this instance, we construe the request as seeking all information involving a specified individual, as well as all information pertaining to a specified street address. Thus, we believe that the specified individual's right to privacy has been implicated. We therefore conclude that the submitted information you have identified as "Criminal History Information" must be withheld under common law privacy as encompassed by section 552.101 of the Government Code. See *id.*

We next address your argument under section 58.007 of the Family Code. Section 552.101 also encompasses statutory confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of that statute reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child . . . 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). Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age.

You have submitted two incident reports regarding runaway children. These incident reports constitute law enforcement records concerning juvenile conduct that occurred after September 1, 1997. See Fam. Code § 51.03(a) (3) (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, the incident reports are confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the city must withhold the incident reports you have identified as "Juvenile Records" from disclosure under section 552.101 of the Government Code.

To summarize, the requested information may be withheld in its entirety. The submitted records pertaining to the named individual must be withheld under section 552.101 in conjunction with common law privacy. The submitted records pertaining to juvenile conduct must be withheld under section 552.101 in conjunction with section 58.007 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.

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

Sincerely,

Michael A. Pearle
Assistant Attorney General
Open Records Division

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