



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 13, 1993

Honorable Sonya Letson  
County Attorney  
Potter County  
303 Courthouse  
Amarillo, Texas 79101

Open Records Decision No. 616

Re: Availability under the Texas Open Records Act, V.T.C.S. article 6252-17a, of a police "mug shot" taken in connection with a single identifiable arrest (RQ-567)

Dear Ms. Letson:

The Potter County Sheriff (the "sheriff") has received a request for a "mug shot" taken in connection with the arrest of an individual. The individual was convicted and is currently serving a sentence for this offense. Pursuant to section 7 of the Texas Open Records Act, article 6252-17a, V.T.C.S., you ask whether the "mug shot" is subject to required public disclosure. You claim that the requested information is made confidential by section 3(a)(8) of the Open Records Act in conjunction with the court's holding in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (hereinafter "*Houston Chronicle*").

Section 3(a)(8) of the act excepts from required public disclosure:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Traditionally, when applying section 3(a)(8), our office has distinguished between cases that are still under active investigation and those that are closed. In cases that are still under active investigation, this section excepts from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976) (citing *Houston Chronicle*, 531 S.W.2d 177). Once a case is closed, however, information may be withheld under section 3(a)(8) only if its release "will unduly interfere with law enforcement or crime prevention." *See* Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444, 434 (1986); 366 (1983) at 3; 216 (1978) at 3; (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)).

The "mug shot" at issue here relates to a law enforcement investigation that is no longer pending. You have not demonstrated that release of the "mug shot" would unduly interfere with law enforcement or crime prevention. We conclude, therefore, that you may not withhold the requested information under section 3(a)(8) of the Open Records Act.

The availability of "mug shots" was addressed in *Houston Chronicle*, which you cite as authority for withholding the requested information. In that case, the court addressed the availability under the Open Records Act of certain broad categories of documents in the possession of a city police department, including offense reports, police blotters, "show-up" sheets, arrest sheets, and "Personal History and Arrest Records." The court held that some of this information was available to the public under the Open Records Act, including the police blotters, "show-up" sheets, and arrest sheets.<sup>1</sup> However, the court also held that "Personal History and Arrest Records" were excepted from required public disclosure.

The "Personal History and Arrest Records" at issue in *Houston Chronicle* included "mug shots" of arrested persons and other information about arrestees, including identifying numbers, name, race, sex, aliases, place and date of birth, physical description, occupation, marital status, relatives, palm prints, and finger prints. *See also* Open Records Decision No. 127 at 4-5. These records primarily contained criminal histories, *i.e.*, information regarding previous arrests and other data relating to suspected crimes, including the offenses, times of arrest, booking numbers, locations, and arresting officers. *Houston Chronicle*, 531 S.W.2d at 179. Such a criminal history record is generally referred to as a "rap sheet." Noting the existence of "inaccurate or misleading entries" in these records, and that many individuals arrested for crimes are wholly innocent, the court held that release of these documents would constitute an unwarranted invasion of an arrestee's privacy interests. *Id.* at 188. We also note that the privacy interest in criminal history record information has been recognized by federal regulations which limit access to criminal history record information which states obtain from the federal government or other states. *See* 28 C.F.R. § 20; *see also United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (finding criminal history information protected from disclosure under Freedom Of Information Act by privacy interest).<sup>2</sup> Recognition of this privacy interest has been echoed in open records decisions issued by this office. *See, e.g.*, Open Records Decision Nos. 565 (1990); 354 (1982); 252 (1980); 216, 183 (1978); 144, 127 (1977).

While this office has recognized that criminal history record information implicates privacy interests, we are not aware of any statutes or judicial opinions that accord privacy protection to "mug shots." Common-law privacy doctrine is incorporated by section 3(a)(1) into the Open Records Act. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information

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<sup>1</sup>Specific information held to be available in *Houston Chronicle* includes, *inter alia*, social security number, names, aliases, race, sex, age, occupations, addresses, police department identification numbers, and physical conditions. *See* Open Records Decision No. 127 at 3; *see also* Open Records Decision Nos. 508 (1988); 394, 366 (1983).

<sup>2</sup>Significantly, the federal government does not include "mug shots" in its definition of criminal history record information and specifically excludes "identification information such as fingerprint records." 28 C.F.R. § 20.3(b).

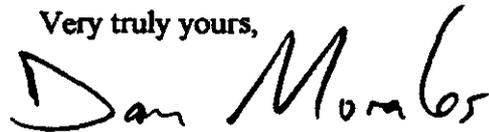
may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated by the Texas Supreme Court in *Industrial Foundation of the South*. Under the *Industrial Foundation of the South* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* it is of no legitimate concern to the public.<sup>3</sup>

We do not believe that the requested "mug shot," which was taken in connection with an individual's arrest for an offense for which he was subsequently convicted and is currently serving time, is intimate or embarrassing. The danger that the "information" might be erroneous or misleading or damage the reputation of an innocent person, as noted in the *Houston Chronicle* case, is not, we think, present here. Accordingly, we conclude that the "mug shot" requested here is not protected from public disclosure under section 3(a)(1) and must be released.

### S U M M A R Y

A "mug shot" taken in connection with an arrest for which the arrestee was subsequently convicted that does not relate to an active criminal investigation is not protected from public disclosure under section 3(a)(1) or section 3(a)(8) of the Texas Open Records Act, article 6252-17a, V.T.C.S.

Very truly yours,



DAN MORALES  
Attorney General of Texas

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<sup>3</sup>Section 3(a)(1) also excepts from public disclosure information protected by constitutional privacy. The right to privacy guaranteed under the United States Constitution protects two related interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 478 (1987) at 4. The first interest applies to the traditional "zones of privacy," *i.e.*, marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 (1986) at 4. The second protects information by employing a balancing test that weighs the privacy interest against the public interest. Open Records Decision No. 478 at 4. It protects against "invasions of privacy involving the most intimate aspects of human affairs." Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490, 492 (5th Cir. 1985)). We do not believe that the requested "mug shot" falls within any of the "zones of privacy" or involves the most intimate aspects of human affairs.

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