



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1995

Mr. David M. Douglas
Assistant Chief
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR95-1240

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31629.

The Texas Department of Public Safety (the "department") received an open records request for

all documents identifying the agencies, departments, locations, individuals' names and dates of all criminal history information inquiries about [a named individual who has been deceased since June 7, 1989] obtained from the Texas Crime Information Center at any time after April 1, 1992, together with all materials necessary to translate any codes found in the report containing that information.

You contend that the requested information, to the extent that it exists, is excepted from public disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." A federal statute or administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. See Open Records Decision Nos. 373 (1983), 226 (1979); see also *Johnson v. Wells*, 566 F.2d 1016 (5th Cir. 1978).

You contend that any information pertaining to criminal history information inquiries from the Texas Crime Information Center ("TCIC") is confidential under section 20.21(g)(6) of title 28 of the Code of Federal Regulations. You argue as follows:

Title 28 CFR Section 20.21(g)(6), states that an individual's right to access and review of [his or her own] criminal history record information shall not extend to data contained in intelligence, investigatory, or other related files and shall not be construed to include any other information than that defined by Section 20.3(b). The latter section refers to the definition of 'criminal history record information.' The definition certainly does not include dissemination logs.

Although we agree that section 20.21(g)(6) limits an individual's right to review criminal history information for purposes of accuracy and completeness so as not to entitle that individual to review "data contained in intelligence, investigatory, or other related files," we do not believe that this provision should be read as an absolute prohibition on the release of such materials; such a broad reading would lead to the inference that *all* such records held by the department are confidential and prohibited from release where clearly this is not the case.

Rather, we view the language in section 20.21(g)(6) as merely qualifying an individual's right to review his or her own criminal history information *under that section*. You have cited no law or federal regulation that clearly prohibits the release of the types of information at issue; consequently we conclude that none of the information at issue comes under the protection of section 552.101. *See* Open Records Decision No. 478 (1987) (as a general rule, statutory confidentiality under statutory predecessor to section 552.101 requires express language making particular information confidential).

We next address whether the department may withhold the requested information under section 552.108 of the Government Code, which excepts from required public disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
[and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement

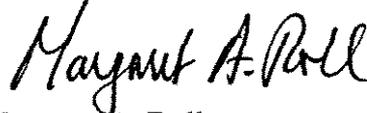
One of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. *See* Open Records Decision Nos. 133 (1976), 127 (1976). When a governmental body claims section 552.108, the relevant question this office must address

is whether the release of the requested information would unduly interfere with law enforcement efforts by undermining a legitimate interest relating to law enforcement or prosecution. Open Records Decision Nos. 434 (1986), 409 (1984). However, whether disclosure of particular records will unduly interfere with law enforcement efforts must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981).

You have provided this office with various hypothetical situations demonstrating how the release of the types of information at issue here could undermine criminal investigations being conducted by other law enforcement agencies in the state. You have not, however, demonstrated with any degree of certainty that *in this particular instance* the release of the information at issue here would interfere with any law enforcement effort.¹ Accordingly, we conclude that you have not met your burden under section 552.108. The department therefore must release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Records Division

MAR/RWP/rho

Ref.: ID# 31629

Enclosures: Submitted documents

cc: Mr. David B. Street
Attorney at Law
1616 Nantucket Drive
Richardson, Texas 75080
(w/o enclosures)

¹Although we acknowledge that this office reached a different result in Open Records Letter No. 90-310 (1990) with regard to similar information, we would distinguish the facts presented in that instance from those before us here.