



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
County Courthouse
P.O. Box 1748
Austin, Texas 78767

OR96-1052

Dear Ms. Armstrong:

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# 35224.

The Travis County district attorney's office (the "district attorney") has received a request for "any and all documents and other information in your possession concerning the criminal file of William Rickey Webb." You state that you have released most of the requested records "because an opinion from [our] office was not sought within the prescribed ten (10) day period." You have submitted two sets of records for our review and claim that they are excepted from disclosure under section 552.101 of the Government Code and thus compelling reasons exist for their nondisclosure.

You claim that the documents submitted in Exhibit B are excepted from required public disclosure by section 552.101 of the Government Code in conjunction with the common-law right of privacy. Section 552.101 of the Open Records Act excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public.

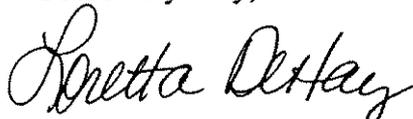
We have reviewed the documents submitted as Exhibit B. We have marked the information that you must withhold on the basis of common-law privacy. The remaining information must be released.

Exhibit A contains criminal history record information ("CHRI") that appears to have been generated by the Texas Crime Information Center ("TCIC"), the National Crime Information Center ("NCIC"), other law enforcement agencies, or compiled by the county. Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Thus, any criminal history record information data that was generated by the federal government or another state may not be made available to the requestor by the district attorney except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any criminal history record information received from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

Similarly, the county's compilation of an individual's criminal history is also protected from disclosure under section 552.101. Section 552.101 encompasses an individual's constitutional and common-law privacy rights. 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). We therefore conclude that the county must withhold from required public disclosure the criminal history information gathered by the county under section 552.101 of the Government Code. *See id.*

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 35224

Enclosures: Marked documents

cc: Mr. Joe K. Crews
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(w/o enclosures)