



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 22, 1996

Mr. Robert P. Rose
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR96-1231

Dear Mr. Rose:

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# 33441.

The Austin Police Department (the "department") received a request for any and all information available on a specifically identified individual. You have submitted four documents for our review contending that providing this information would, in effect, be providing the criminal history of the named individuals and you assert the requested information is excepted from required public disclosure under section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See also* Gov't Code 411.084 (prohibiting release of criminal history information obtained from Department of Public Safety). Under *Industrial Foundation*, 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.

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, 5 U.S.C. § 552, and the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552a). Recognition of this privacy interest has been echoed in open records decisions issued by this office. See Open Records Decision Nos. 616 (1993), 565 (1990), 216 (1978), 183 (1978), 144 (1976), 127 (1976).¹

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), 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 offense reports.² However, the court also held that "Personal History and Arrest Records" were excepted from required public disclosure. These records primarily contained criminal histories, such as 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." The court held that release of these documents would constitute an unwarranted invasion of an arrestee's privacy interests. *Id.* at 188.

The information requested here is of the same type made confidential by *Houston Chronicle*. As the requestor seeks any and all information relating to the named individual, release of this information also provides the named individual's criminal history information. As noted above, federal and state case law regarding an individual's common-law right to privacy expressly prohibits the release of such information. Accordingly, we conclude that the department must withhold the requested information from required public disclosure under section 552.101 of the Government Code.

¹The Code of Federal Regulations defines "criminal history information" as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release." 28 C.F.R. § 20.3(b). The information at issue here fits this description.

²Specific information held to be available in *Houston Chronicle Publishing Co.* includes, among other things, social security number, names, aliases, race, sex, age, occupations, addresses, police department identification numbers, and physical conditions. See Open Records Decision No. 127 (1976) at 3; see also Open Records Decision Nos. 508 (1988), 394 (1983), 366 (1983).

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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 33441

Enclosures: Submitted documents

cc: Mr. John McCrary
P.O. Box 125
Forney, Texas 75126
(w/o enclosures)