



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1997

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

OR97-0219

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37720.

Travis County (the "county") received a request for information concerning incident reports from 1990 to 1995. Specifically, the requestor seeks copies of the following:

[A]ll copies of the original incident reports filled out by County employees from 1990 to Present (1995), in which indecent exposure, public lewdness, sexual assaults, public intoxications, D.W.I./D.U.I and park evictions had occurred in NorthWest District parks ... [including] incident reports where someone was arrested or cited for breaking the law while in a NorthWest District park.

The county asserts that the requested information is excepted from required public disclosure under section 552.101 of the Government Code.<sup>1</sup>

You claim that section 552.101 excepts from disclosure criminal history report information ("CHRI"). Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Gov't Code § 552.301(b)(3); *see also* Open Records Decisions Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). You have submitted to this office for review representative samples of the requested information. Although the submitted samples do not have CHRI, we agree that if there is CHRI in any of the other documents, it must be withheld under section 552.101 of the Government Code.<sup>2</sup>

Section 552.101 also incorporates both the common-law and constitutional right of privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law 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 Foundation* 540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov’t Code § 552.101). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Industrial Foundation* 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

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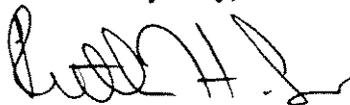
<sup>2</sup>You state that these documents constitute the criminal history of individuals pursuant to *United States Dep’t of Justice v. Reporter’s Comm. For Freedom of the Press*, 489 U.S. 749 (1989) and, thus, are protected by privacy. We note, however, that these documents do not constitute criminal history information that would be protected from disclosure under privacy. See Open Records Decision Nos. 616 (1993), 565 (1990).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the documents submitted for our consideration and agree that some of the information in one document is protected by common-law privacy. We have marked this information.

You also assert that certain information in Exhibit B contains potentially defamatory information and that releasing this information could subject the county to liability for libel. You state that if any mistakes have been made in the reports at issue, releasing the reports could be an inadvertent release of false information. We note that the cases you cite are not judicial decisions that make this type of information confidential in the hands of a governmental body. Consequently, only those sections of Exhibit B that are protected by common-law privacy under section 552.101 as discussed above are excepted from disclosure.

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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/SAB/ch

Ref. ID# 37720

Enclosures: Submitted documents

cc.: Ms. Kim Kimball  
8615 Winding Walk  
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(w/o enclosures)

