



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 29, 1997

Mr. Kevin D. Pagan  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR97-1973

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 109697.

The City of McAllen Police Department (the "city"), which your office represents, received a request for "any/all" records about requestor. You have submitted information which you contend is responsive to the request. You state that "if appropriate, the City has already released the 'front page' offense report information."<sup>1</sup> However, you assert that the remaining information may be withheld from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is

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<sup>1</sup>As you have noted, information normally found on the front page of an offense report is generally considered public. *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); Open Records Decision No. 127 (1976). The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). After reviewing the submitted records, we believe that the material at issue is information of a law enforcement agency that deals with the investigation and prosecution of crime. We, therefore, conclude that section 552.108 excepts the requested records from required public disclosure.

Although you have not raised section 552.101 as an applicable exception, we note that some information revealed in the submitted records, and otherwise subject to disclosure as front page offense report information pursuant to *Houston Chronicle*, may be excepted from required public disclosure under constitutional or common-law privacy. Therefore, we must next address whether section 552.101 of the Government Code excepts some of the submitted information, not covered by section 552.108, from required public disclosure.<sup>2</sup>

Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses both common-law and constitutional 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 of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

You have submitted to our office some information which may be classified as criminal history record information (“CHRI”). In *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the United States Supreme Court concluded that where an individual’s CHRI is compiled or summarized by a governmental entity, the information takes on a character that implicates an individual’s right of privacy in a manner that the same individual records in an uncompiled state do not. However, the right of privacy is personal to an individual. See generally Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981). We note that while the requestor’s CHRI information is not available to the public at large, the requestor has a special right of access to it under section 552.023 of the Government Code.<sup>3</sup> See also Open

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<sup>2</sup>The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>Section 552.023 grants an individual or an individual’s representative access to information that is otherwise excepted from required public disclosure based on a law that protects that individual’s privacy interests. See Open Records Decision No. 587 (1991).

Records Decision No. 481 (1987). Therefore, any CHRI contained in the submitted records relating to the requestor is not excepted from required public disclosure by a common-law right of privacy from the requestor himself. *See* Gov't Code § 552.023.

We are resolving this matter with this 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 may 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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with a large initial "S" that loops around the first part of the name.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref.: ID# 109697

Enclosures: Submitted documents

cc: Mr. Bradley A. Garza  
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El Paso, Texas 79938-8105  
(w/o enclosures)

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