



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 12, 1998

Mr. John Steiner
Division Chief
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR98-0110

Dear Mr. Steiner:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111930.

The City of Austin (the "city") received a request for a police investigation report into the drowning death of a small child. You state that the city "is willing" to release the report, except for a small redacted portion, to the requestor, who is the mother of the deceased child. You assert that the redacted information is excepted from disclosure pursuant to the common-law privacy aspect of section 552.101 and also under section 552.108.

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 Foundation v. Texas Industrial Accident Board*, 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 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.

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 Company 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) (hereinafter "*Houston Chronicle*"), 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. 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 individual's privacy interests. *Id.* at 188. We agree that most of the information marked in the report is of the same type made confidential by *Houston Chronicle* and must be withheld from disclosure. However, we have marked several sentences that are not protected from disclosure under section 552.101.

We will address your section 552.108 argument as to these two sentences, since most of the marked information is protected from disclosure under section 552.101. You assert that the report at issue is excepted from disclosure because "[t]he requested records have not resulted in a final conviction or a deferred adjudication." Section 552.108, the "law enforcement exception," provides in relevant part as follows:

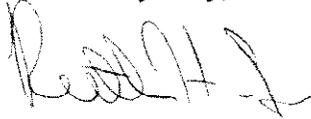
(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. . . .

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.

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have not stated that the requested information pertains to an ongoing criminal investigation or prosecution or explained how its release would interfere in some other way with the detection, investigation, or prosecution of crime. A governmental body seeking to withhold information pursuant to section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. It is not clear to this office, nor have you explained, how or if the investigation has concluded. Since you have not shown the applicability of section 552.108 to the two sentences that are not protected from disclosure under section 552.101, you must release this 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 111930

Enclosures: Submitted marked documents

cc: Ms. Iva S. White
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Killeen, Texas 76543
(w/o enclosures)