



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1998

Mr. Charles J. Breaux Jr. - Legal
Administrative Assistant to the Sheriff
Jefferson County
1001 Pearl Street
Beaumont, Texas 77704

OR98-1386

Dear Mr. Breaux:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115616.

The Jefferson County Sheriff's Office ("sheriff's office") received a request for the criminal history, or rap sheet, of a named individual. You assert that the requested information is protected from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.

The requestor's first request was received by the sheriff's office on December 12, 1997. The requestor asked for the "home address and criminal history" of this named individual. The sheriff's office then apparently sought more information about the named individual, to clarify which person's records were sought. In a letter received by the sheriff's office on January 12, 1998, the requestor provided the race and age of the named individual, then again asked for the criminal history and address of the named individual, or a "rap sheet" on the named individual, to include the disposition of criminal charges. Correspondence to this office indicates that on March 9, 1998, the sheriff's office and the requestor finally agreed as to the identity of the named individual whose records were sought.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. However, section 552.222(b) of the Government Code provides that if it is

unclear to the governmental body what information is requested, the governmental body may ask the requestor to clarify the request.

We will address your argument that the requested information is made confidential on the basis of privacy as protected under section 552.101. 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

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.

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.

The requestor has asked for the named individual's rap sheet or criminal history records. The sheriff's office may not release this information to the requestor, which is confidential under section 552.101 as discussed above. Because the information at issue is protected from disclosure under section 552.101, we need not address your section 552.108 and 552.130 arguments.

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# 115616

Enclosures: Submitted documents

cc: Ms. Beatrice Benavides
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(w/o enclosures)