



March 10, 1999

Ms. Katheryn H. West
Assistant City Attorney
Office of the City Attorney
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-0680

Dear Ms. West:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 122714.

The City of Dallas Police Department (the "department") received a request for various categories of information concerning the arrest of a specified person on a particular date. In response to the request, you submit to this office for review three pages as responsive to the request. You assert that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Based on the department's brief to this office and the requestor's letter, it appears that the department did not seek an open records decision from this office within the statutory ten *business* day deadline. *See* Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason. *See* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses both common-law and constitutional privacy, as well as information protected by other statutes. To the extent the requested records may contain criminal history record information ("CHRI"), we must note that the privacy interest in CHRI has been recognized by federal regulations which limit access to CHRI that 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 Privacy Act of 1974, 5 U.S.C. § 552a). If the information submitted for our review contains CHRI that is generated by the Texas Crime Information Center (“TCIC”) or the National Crime Information Center (“NCIC”) it must not be publicly released. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose, Gov’t Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code

Finally, we address your contention that “the request asks for all records in the possession of the Dallas Police Department,” concerning a specified person. We disagree. The requestor specifically sets out six categories of information concerning a specified person on a particular date. Therefore, the requestor’s request is not merely a request for “all records” about a specified person. Further, we note that pursuant to section 552.301(b), a governmental body is required to submit to this office a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Since you have not submitted any other records other than the three MDT pages, we advise you that should other substantially different records exist, which you have not submitted, the failure to comply with the act will result in the legal presumption that the information is public information. Open Records Decision No. 195 (1978); *but see* Gov’t Code § 552.352.

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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive, flowing style with a large initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 122714

cc: Mr. Mike Christopher
PIC Investigations
P.O. Box 13087
Arlington, Texas 76094
(w/o enclosures)