



June 1, 1999

Mr. Merrill E. Nunn
City Attorney
City of Amarillo
Legal Department
P.O. Box 1971
Amarillo, Texas 79105-1971

OR99-1495

Dear Mr. Nunn:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124531.

The City of Amarillo (the "city") received a request for the criminal history of a particular individual who broke the requestor's client's nose. The requestor also seeks the identification and address of an individual who was in jail the night of the assault. You contend that criminal history record information ("CHRI") obtained from the Texas Crime Information Center ("TCIC") and the National Crime Information Center ("NCIC") is confidential under section 552.101 of the Government Code. You also contend that identifying who was an inmate on a particular date would be the equivalent of providing a criminal history of that individual and that such information is protected under the common-law privacy provision of section 552.101 of the Government Code.

Section 552.101 applies to information that is made confidential by law, including information made confidential by statute. Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.*

Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code

§ 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127.

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. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We agree that the submitted CHRI is confidential and may not be released.

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 Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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.

In *Houston Chronicle Publ'g 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) (hereinafter "*Houston Chronicle*"), the court addressed the availability under the Public Information 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, 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 Publ'g Co.*, 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 arrestee's protected privacy interests. *Id.* at 188. We do not agree that providing the identity of a individual who was incarcerated on a particular date is a compilation of that individual's CHRI. This information, which you indicate is publicly available on the police blotter, is not private and must be released.

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, appearing to read 'Ruth H. Soucy', with a long horizontal flourish extending to the right.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 124531

Encl. Submitted documents

cc: Mr. Art Lara, Jr.
Attorney at Law
1616 S. Kentucky, Building D, Suite 240
Amarillo, Texas 79102
(w/o enclosures)