



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 22, 1995

Ms. Tracy R. Briggs  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR95-778

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28699.

The City of Houston (the "city") has received a request for the "mug shots" of Louis Montroy Brown and Jerry Williams. We understand that the requestor seeks the "mug shot" of Mr. Brown that relates to Mr. Brown's arrest for assault and rape in July 1994. You advise us that the city has made this "mug shot" available to the requestor. Mr. Williams, on the other hand, was not arrested or charged in connection with the incident for which Mr. Brown was arrested. The city, however, is in possession of a "mug shot" of Mr. Williams relating to a charge that resulted in Mr. Williams's arrest in June of 1992. You have submitted this "mug shot" to us for review and claim that section 552.101 of the Government Code exempts it from required public disclosure.

Section 552.101 of the Government Code exempts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with Mr. William's common-law right to privacy. Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Under

the *Industrial Foundation of the South* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and it is of no legitimate concern to the public.<sup>1</sup>

In Open Records Decision No. 616 (1993), this office concluded that a "mug shot" is not intimate or embarrassing when it is taken in connection with an individual's arrest for an offense for which he was subsequently convicted and is currently serving time. In so concluding, this office considered the treatment of "mug shots" in *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). Noting that "inaccurate or misleading entries" exist in the Houston Police Department's "Personnel History and Arrest Records," which included "mug shots," and that many individuals arrested for crimes are wholly innocent, the court held that releasing these documents would constitute an unwarranted invasion of an arrestee's privacy interests. *Houston Chronicle*, 531 S.W.2d at 188. The "mug shot" submitted to us for review was taken in connection with Mr. Williams's arrest in 1992. Mr. Williams was also arrested and convicted of a criminal offense in November of 1991. The fact that Mr. Williams was not arrested for rape and assault along with Mr. Brown in July 1994 does not change the fact that Mr. Williams was arrested and convicted for a prior offense in November of 1991. Consequently, the danger that the "information" relating to the prior offense might be erroneous or misleading or damage the reputation of Mr. Williams is not present here.<sup>2</sup> We conclude, therefore, that the submitted "mug shot" is not protected from required public disclosure under section 552.101 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 may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

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<sup>1</sup>Section 552.101 also excepts from public disclosure information protected by constitutional privacy. We do not believe that the requested "mug shot" is protected by constitutional privacy. See Open Records Decision No. 616 (1993), at n. 3.

<sup>2</sup>We note as well that invasion of privacy on false-light grounds is not an actionable tort in Texas. See *Cain v. Hearst Corp.*, 878 S.W.2d 577 (Tex. 1994).

Ref: ID# 28699

Enclosure: Submitted photo

cc: Mr. Kenneth K. Martin  
1701 Michigan, Suite #2  
Houston, Texas 77006  
(w/o enclosure)