



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1997

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

OR97-0087

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34581.

The City of Austin Police Department (the "department") received an open records request for four categories of records. You state that you do not have records responsive to item 2 (medical reports of the arrestee) and item 4 (documents concerning reprimands against the arresting officer) of the request. Item 1 of the request asks for "any police reports involving Harold Stanley as the arrestee for the time period June 1993 to August 1993," and item 3 asks for "any documents, reports, notes, or other information assembled by Sgt. Jeff Addicks while investigating an assault that occurred in July of 1993 by an Austin Police Department Officer naming Harold Stanley as the victim." You state that you have provided the requestor with a copy of the front page of the offense report. You assert that the remainder of the records responsive to items 1 and 3 of the request are excepted from required public disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have reviewed the submitted documents, videotape, audiotape, and photographs.

We first consider the documents requested in item 1. 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 that 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 As the requestor seeks all police reports relating to the arrest of the named individual, release of this information also provides the named individual's criminal history information. As noted above, federal and state case law regarding an individual's common-law right to privacy expressly prohibits the release of such information. Accordingly, we conclude that the department must withhold the requested information in item 1 from required public disclosure under section 552.101 of the Government Code.

We now examine the documents submitted in response to Item 3 of the request. Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.² *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); Open Records Decision No. 127 (1976). The documents at issue

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 descriptions.

²The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

in item 3 of the request concern the detection, investigation or prosecution of crime. We conclude that, with the exception of first page offense report information, the department may withhold the requested information under section 552.108 of the Government Code.³

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.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/rho

Ref.: ID# 34581

Enclosures: Submitted documents

cc: Ms. Kellie M. Bailey
Bailey, Brinkley & Heston
2414 Exposition Blvd.
Austin, Texas 78703
(w/o enclosures)

³Because we are able to make a determination under sections 552.101 and 552.108, we do not address your argument under section 552.103 of the Government Code.