



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 12, 1998

Ms. Deane Bostick-Martin
Records System Supervisor
P.O. Box 2000
Lubbock, Texas 79457-2000

OR98-1202

Dear Ms. Bostick-Martin:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115044.

The City of Lubbock (the "city") received a request for the arrest record of a named individual. The requestor also seeks all case numbers and police reports pertaining to the arrest record. You contend that the requested information is protected from disclosure under section 552.101 of the Government Code, and that the request is for the compiled criminal history of the named individual.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history information must be withheld from required public disclosure under common-law privacy if it meets the test set 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 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 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.² 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 Publishing 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 privacy interests. *Id.* at 188.

The information requested here is of the same type made confidential by *Houston Chronicle Publishing Co.* As the requestor seeks all arrest and related information pertaining to a named individual, release of this information would provide the named individual's criminal history. As noted above, federal and state case law regarding an individual's right to privacy expressly prohibits the release of such information. Thus, the city may not release the requested records.

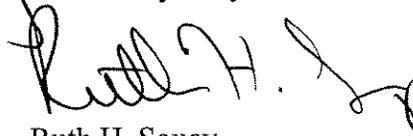
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

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.

²Specific information held to be available in *Houston Chronicle Publishing Co.* includes, among other things, social security number, names, aliases, race, sex, age, occupations, addresses, police department identification numbers, and physical conditions. *See* Open Records Decision No. 127 (1976) at 3; *see also* Open Records Decision Nos. 508 (1988), 394 (1983), 366 (1983).

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is fluid and cursive, with a large initial "R" and "S".

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 115044

Enclosures: Submitted documents

cc: Ms. Gracie Romero
3405 E. 14th
Lubbock, Texas 79403
(w/o enclosures)