



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 14, 1998

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith
500 North Akard
Dallas, Texas 75201

OR98-2420

Dear Mr. Hager:

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# 118740.

The City of Lancaster (the "city"), which you represent, received an open records request for a copy of the requestor's criminal history record information ("CHRI").¹ You contend the requested information is excepted from required public disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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

¹Although you did not submit to this office a copy of the written request received by the city, *see* Gov't Code §§ 552.301(b)(2), .303, we conclude that compelling reasons for withholding the information override the resulting presumption of openness. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The city therefore must withhold the requested information.

Individuals may, however, gain access to their own criminal history and arrest records. Attorney General Opinion MW-95 (1979). The Code of Federal Regulations requires criminal justice agencies that utilize the services of Department of Justice criminal history record information systems to establish procedures for any individual to gain access to and review his criminal history record information for completeness and accuracy, provided that the individual pay any required processing fee and verify his identity by fingerprint comparison. See 28 C.F.R. § 20.34(a). We further note that it is the policy of the Department of Public Safety, which administers the NCIC and maintains the Texas Crime Information Center ("TCIC"), to provide any individual with access to his criminal history record on file, utilizing the procedure as outlined in 37 T.A.C. section 27.1.

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/ch

Ref: ID# 118740

Enclosures: Submitted documents

cc: Mr. Timothy Speaks
4141 Portwood
Lancaster, Texas 75134
(w/o enclosures)