



February 16, 1999

Ms. Lilia Ledesma-Gonzalez
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR99-0454

Dear Ms. Ledesma-Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123802.

The City of McAllen received a request for the requestor's "rap sheet." You seek to withhold the requested information under sections 552.101 and 552.108 of the Government Code.

Section 552.108(b) excepts from required public disclosure

(b) An 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 . . . if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You assert that the requested records are excepted from disclosure under section 552.108(b) "in that they are . . . internal records or notations of a law enforcement agency or prosecutor that are maintained for internal use in matters relating to law enforcement or prosecution." Having reviewed your arguments, we do not find that you have established that release of the records at issue would interfere with law enforcement or otherwise fall within the protection of section 552.108. Therefore, you may not withhold the requested records under section 552.108.

You also contend that the requested "rap sheet" may be withheld under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by common-law privacy. 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 Industrial Accident Board*, 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,) the court held that release of "Personal History and Arrest Records," or "rap sheets," would constitute an unwarranted invasion of an arrestee's privacy interests. *Id.* at 188. *See also United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). 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).

Here, we believe that the requestor has a special right of access to the requested information. Section 552.023 of the Open Records Act provides that "[a] person . . . has a special right of access, beyond the right of the general public, to information . . . that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interest." Therefore, although the requested information is protected from *public* release by common-law privacy, you must release it to the requestor here pursuant to section 552.023.

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

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 123802

Enclosures: Submitted documents

cc: Mr. Dioniso Nieto
525 N. 20th Street A
McAllen, Texas 78504
(w/o enclosures)