



**THE ATTORNEY GENERAL  
OF TEXAS**

September 5, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. Wayne H. Coughran  
Assistant City Attorney  
105 W. Juan Linn  
P. O. Box 1758  
Victoria, Texas 77901

Dear Mr. Coughran:

On December 28, 1988, you asked whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5825. This decision is OR89-287. Your request was combined initially with a formal file on the same issue, RQ-1616. That file has now been closed. In our letter to you of February 14, 1989, we indicated that an individual's access to his or her own criminal history record information is governed by the procedures outlined in the federal regulations governing the program -- not by the Texas Open Records Act. Several related issues that your request raised do relate to the Open Records Act and must still be resolved, however.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The Victoria Police Department received a request for "copies of any offense reports listed on file with your agency, including History and arrest records and Blotter cards in the name of . . . ." The requestor also seeks a copy of his own criminal history and arrest record and copies of complaints filed against specified individuals.

You suggest that section 3(a)(1) of the Open Records Act protects this information from required public disclosure. Section 3(a)(1) protects "information deemed confidential by law."

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), the court of civil appeals established guidelines on what information contained in police files is public. The Personal History and Arrest Report, which consists of the individual's criminal history, should remain closed to the public on two grounds: 1) the records fall under the protection of section 3(a)(8) of the Open Records Act as records "maintained for internal use in matters relating to law enforcement," id. at 185; and 2) the release of these records, a compilation of arrests for particular names which often contains inaccurate or misleading entries, could result in false conclusions as to the individual's criminal past, thus raising "false light" privacy interests protected by section 3(a)(1). Id. at 188; see also Open Records Decision No. 438 (1986) (for general discussion of "false light" privacy). Consequently, criminal history information is not public as a general rule. Cf. Open Records Decision No. 144 (1976).

Individuals may, however, gain access to their own criminal history and arrest records. Attorney General Opinion MW-95 (1979). This right is not governed by the Texas Open Records Act, which does not as a general rule create special rights of access separate from the general rights of the public. V.T.C.S. art. 6252-17a, § 14(a). The Code of Federal Regulations requires that criminal justice agencies that utilize the services of Department of Justice criminal history record information systems 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) (1988).

You apparently also argue that the request for offense reports is the equivalent of a request for criminal history record information. The privacy interest in preventing release of criminal history information recognized by the Houston Chronicle case lay in the fact that the history at issue was a compilation of data, obtained from a remote source, the accuracy of which could not be easily ascertained. See 531 S.W.2d at 188. 531 S.W.2d at 185. When an individual requests copies of existing offense reports, however, these dangers are not present. A request for copies of offense reports is not the equivalent of a request for criminal history information. Moreover, if the offense reports were considered the equivalent of a request for criminal history record information, access could not be denied to the subject of the reports. See Attorney General

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Opinion MW-95 (1979); see also Open Records Decision No. 481 (1988). The requested offense reports must be released.

Finally, the requestor seeks copies of "any complaints filed against" a specified individual. Your letter states:

I presume that this is a request for copies of all charging instruments that have been filed with a court of proper jurisdiction. Since our police department is not in possession of such complaints, should the requestor direct this request to the entity that may be in possession?

We do not interpret the request as you have. The requestor seeks copies of complaints (i.e. by prisoners, citizens, or public employees) against specified individuals. These complaints could take the form of a letter or a memo. If the police department has received any complaints about the employee/officer at issue, they must be released. See Open Records Decision No. 208 (1978).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-287.

Yours very truly,

*Open Government Section  
of the Opinion Committee*   
Open Government Section  
of the Opinion Committee  
Prepared by Jennifer S. Riggs  
Chief, Open Government Section

JSR/bc

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