



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 7, 1992

Mr. Fred Toler  
Executive Director  
Texas Commission on Law Enforcement  
Standards and Education  
1033 La Posada, Suite 240  
Austin, Texas 78752-3824

OR92-144

Dear Mr. Toler:

You ask 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# 12438.

The Texas Commission on Law Enforcement Standards and Education (the commission) received a request for access to all information concerning an application for Agreement Training/Instructor Certification relating to the Texas Panhandle Training Academy/Texas Panhandle Training Center. The requestor is the authorized representative of the subject of the requested information. See V.T.C.S. art. 6252-17a, § 3B. The requestor specifically seeks access to any information relating to communications between an employee of the commission and a Mr. Dale Morgan. In response to this request you have submitted for our inspection copies of four handwritten notes taken by an employee of the commission, one of which was written on a computer printout of criminal history information obtained from the Texas Department of Public Safety. You claim the requested material is excepted from required public disclosure by sections 3(a)(1) and 3(a)(8) of the Open Records Act.

Section 3(a)(1) protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You have informed us that the information was obtained from confidential sources and should therefore be protected by the informer's privilege. The informer's privilege is designed to encourage *citizens* to comply with their obligation to report violations of the law to officers charged with enforcing the law. See *Roviaro v. United States*, 353 U.S. 53

(1957). The information offered for our inspection was, we understand, obtained from a government employee or employees presumably acting in their official capacities. Further, you have not established what laws, if any, the commission is enforcing for purposes of the privilege. It appears only that the commission was compiling information in an effort to determine the fitness of an applicant for a training agreement with the commission. Consequently, the information cannot be withheld pursuant to the informer's privilege.

Further, you have not asserted any privacy interest in withholding the requested information. In any case, it would appear to us that, because the information relates to the fitness and qualifications of an individual applying to train law enforcement officers, it is of significant public interest. *See Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (test for common law privacy). We therefore do not believe the information may be withheld pursuant to common law privacy.

This office has previously held that where a federal agency shares information with a governmental body in Texas pursuant to a policy affording the governmental body greater access to the information than that afforded to the general public, section 3(a)(1) will except such information from public disclosure if the information is confidential in the hands of the federal agency under federal law. Open Records Decision No. 561 (1990) (copy enclosed). One of the notes indicates that the federal government maintains the information confidentially as part of the federal pretrial diversion program. Information obtained in the course of performing pretrial services functions, including the preparation of a pretrial diversion report, is made confidential by federal law and may be disclosed only in accordance with exceptions provided therein. *See* 18 U.S.C. § 3153(c). We have discussed this matter with officials of the Probation Office of the United States District Court, Northern District of Texas, who, after consulting with the office of the United States Attorney, advised us that it does not consider this information to be confidential. That office therefore does not object to release of the information in question. Consequently, we find that the information is not excepted by this aspect of section 3(a)(1).

You also claim the information is excepted by section 3(a)(8), which generally protects information maintained by law enforcement agencies, the disclosure of which would unduly interfere with law enforcement and crime prevention. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The information at issue comprises criminal history information. Your office has advised us that the

information reflects the results of an investigation by a federal law enforcement agency, the United States Justice Department, and should therefore be protected by section 3(a)(8).

In *Houston Chronicle Pub. 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 a person's arrest record and criminal history were excepted from public disclosure by section 3(a)(8). The court's holding was couched in terms of the legitimate law enforcement interest in obtaining such information and the privacy interests of the individual in shielding this information from general public scrutiny. Subsequent decisions of this office have emphasized the former aspect of the *Houston Chronicle* holding. See, e.g., Open Records Decision Nos. 216 (1978); 183 (1978). See also Open Records Decision Nos. 354 (1982); 252 (1980). Criminal history information has been deemed excepted under section 3(a)(8) where, as here, the information is held by an administrative agency rather than a law enforcement agency. Open Records Decision No. 183 (1978).

It must also be noted, however, that two prior decisions of this office have acknowledged, at least inferentially, the privacy interests in criminal history information protected by section 3(a)(8). Open Records Decision Nos. 565 (1990); 216 (1978) (both discussed below). This aspect of the *Houston Chronicle* holding has become more important since the addition of section 3B to the Open Records Act in 1989. That section provides the following in pertinent part:

A person or the authorized representative of a person has, beyond the right of the general public, a special right of access to and copies of any records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests. The fact that information is deemed confidential by privacy principles under this Act does grant the governmental body the right to deny access to the person, or the person's authorized representative, to whom the information relates. However, laws and provisions of this Act, other than ones intended to protect that person's privacy interests, may still form the basis for denial of access to the person or the person's representative to whom the information relates.

V.T.C.S. art. 6252-17a, § 3B(a). Section 3B essentially prevents a governmental body from asserting an individual's own privacy interests as a reason to withhold the records from the individual. In the case of criminal history information, it is necessary to examine the dual interests protected by section 3(a)(8).

Open Records Decision No. 216 (1978) (copy enclosed) dealt in part with a request for criminal history information pertaining to a deceased person. The attorney general ultimately concluded that release of the information would jeopardize the governmental body's access to criminal history information maintained by the United States Department of Justice and, thus, would unduly interfere with law enforcement and crime prevention. In the course of reaching this conclusion the attorney general noted the *Houston Chronicle* holding but observed the familiar rule that the right of privacy lapses upon death. The decision implied that were it not for the independent law enforcement interest established by the governmental body, the criminal history information would not be protected by the deceased person's right of privacy and, consequently, could not be withheld under section 3(a)(8).

Open Records Decision No. 565 (1990) (copy enclosed) also dealt with a request for criminal history information, this time by the subject of the information. Without explicitly acknowledging the privacy interests at stake, the decision concluded that by virtue of the fact that the governmental body failed to establish a law enforcement interest sufficient to withhold the information, the individual was entitled under section 3B to receive the criminal history information relating to himself. A similar conclusion is warranted here.

As previously described, the federal officials in charge of this case have informed us that they do not object to the release of the information. Furthermore, you have not identified any continuing law enforcement interest that would justify withholding the information. *See generally* Open Records Decision No. 565 (1990) at 12. Accordingly, you must provide the requestor this information. Release of the information under these circumstances does not constitute a release to the public prohibited by section 10 of the Open Records Act. V.T.C.S. art. 6252-17a, § 3B(b).

Finally, we note that the last item of information submitted for our inspection appears to consist of a printout of criminal history information obtained from a centralized information system such as the National Crime Information Center (NCIC) or the Texas Crime Information Center (TCIC). Information obtained from these sources may be disclosed only in accordance with relevant

federal guidelines. *See* Open Records Decision No. 565 at 10-12. The handwritten notations appended to the copy of the printout may not be withheld since, again, you have not demonstrated a law enforcement interest sufficient to withhold this information.

To summarize, we conclude that the commission has failed to establish that the bulk of the requested information is excepted from required public disclosure by section 3(a)(1) or section 3(a)(8) of the Open Records Act. Information from the NCIC or TCIC may be released only in accordance with relevant federal guidelines. 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 OR91-.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragón", with a stylized flourish at the end.

Steve Aragón  
Assistant Attorney General  
Opinion Committee

SA/lmm

Ref.: ID# 12438; 12479; 12643; 15556

Enclosures: Open Record Decision Nos. 561, 565 (1990); 216 (1978)

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