



The Attorney General of Texas

December 31, 1982

MARK WHITE
Attorney General

Supreme Court Building
P. O. Box 12548
Austin, TX. 78711-2548
12/475-2501
Telex 910/874-1367
Telecopier 512/475-0266

1607 Main St., Suite 1400
Dallas, TX. 75201-4709
14/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905-2793
115/533-3484

20 Dallas Ave., Suite 202
Houston, TX. 77002-6986
713/650-0666

306 Broadway, Suite 312
Lubbock, TX. 79401-3479
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501-1685
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205-2797
512/225-4191

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Mr. C. Robert Kemble
President
Lamar University
P. O. Box 10001
Beaumont, Texas 77710

Open Records Decision No. 342

Re: Availability to public of
arrest records of non-students
held by state university

Dear Mr. Kemble:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the availability of arrest records of non-students held by a state university. The requestor seeks the following information from the police department of Lamar University:

1. name and business address of the custodian of Lamar University police records;

2. records of all complaints filed with the internal affairs division of the Lamar University police department, 1974-82, including the name of the complainant, the name of the officer who was the subject of the complaint, and the final disposition of the complaint;

3. daily arrest records of the Lamar University police department, 1981-82;

4. the name, position, experience, tenure, salary and educational level of certain employees of Lamar University;

5. certain receipts issued to students by an employee of the Lamar University police department;

6. all information regarding requestor in the custody of the Lamar University police department.

In response to the first item requested, the Open Records Act provides in section 5(a) that the "chief administrative officer of the governmental body shall be custodian of public records." The act contemplates that a custodian may designate an "agent who controls the

use of public records." Section 5(b). If an agent of the president of Lamar University controls the police records of that institution, section 6(2) of the Act, which specifically makes public the "names [and] title" of "all employees and officers of governmental bodies," requires that his identity be disclosed.

As to the second item, this office addressed a similar inquiry from the city of Dallas in Open Records Decision No. 208 (1978). The opinion concluded that "the names of complainants who filed formal complaints with the police department's internal affairs division, the name of the officer who is the subject of the complaint, and the final disposition of the complaint by the city police department is public information and is required to be disclosed." See also Open Records Decision No. 139 (1976). This principle is applicable to all records of complaints filed by non-students and held by the Lamar University Police Department.

The principle is applicable to complaints filed by students, however, only if such information may not be deemed "education records." Section 14(e) of the Open Records Act provides:

Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974 [hereafter the Buckley Amendment].

The Buckley Amendment excludes certain law enforcement records from the definition of "education records":

if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1) of this section, the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction.

20 U.S.C. §1232g(a)(4)(B)(ii). The regulations state this exclusion more clearly:

(b) The term ['education records'] does not include

....

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition;

(ii) Maintained solely for law enforcement purposes, and

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction; Provided, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

45 C.F.R. §99.3 (1977). See Open Records Decision No. 205 (1978). Thus, complaints filed by students with the Lamar University Police Department are education records unless such records are separately maintained solely for law enforcement purposes; they are not made available to persons other than law enforcement officials of the same jurisdiction, including university officials not assigned to law enforcement duties; and education records for the institution are not disclosed to persons of the institution's law enforcement unit. Under the Buckley amendment, if the university police department attempts to disclose these records to a member of the general public, they will become education records subject to the confidentiality requirements of that statute.

The same reasoning also applies to the daily arrest records held by the Lamar University Police Department. As noted in our answer to your question about the second requested item, however, such information may not be disclosed in any event.

Certain information about public employees, including name, position, experience, tenure, salary and educational level, has long been held disclosable. Open Records Decision No. 165 (1977). See also Open Records Decision Nos. 277 (1981); 215 (1978); 157 (1977). In our opinion, the information requested in the fourth item must be furnished to the requestor.

The university indicates that no information exists about the receipts referred to as item 5. The Open Records Act applies only to information in existence, and does not require the governmental body to prepare new information. Open Records Decision No. 87 (1975).

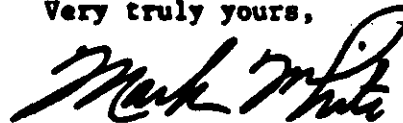
Finally, we believe that certain information about the requestor in the custody of the Lamar University Police Department should be made available to him pursuant to federal law incorporated into

regulations promulgated by the governor's Criminal Justice Division. 1 T.A.C. §3.321 (1980). Information that is the the subject of an active investigation and thus excepted by section 3(a)(8), may be withheld. All other information about the individual is available to him. See Open Records Decision No. 127 (1976). In Attorney General Opinion MW-95 (1979), we said that:

a law enforcement agency should permit an individual to review criminal history record information maintained about him and should provide the individual a copy of that portion of the record the accuracy or completeness of which is disputed.

In our view, that decision is dispositive of the present inquiry. Accordingly, it is our decision that this requestor should be furnished access to all information about himself in the custody of the Lamar University Police Department.

Very truly yours,



MARK WHITE
Attorney General of Texas

JOHN W. PAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
Executive Assistant Attorney General

Prepared by Rick Gilpin
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Jon Bible
Rick Gilpin
Patricia Hinojosa
Jim Moellinger