



**THE ATTORNEY GENERAL
OF TEXAS**

January 27, 1987

**WM MATTOX
ATTORNEY GENERAL**

Mr. Gary Keane
Legal Counsel
Dallas/Fort Worth
International Airport
P. O. Drawer DFW
DFW Airport, Texas 75261

Open Records Decision No. 457

Re: Whether the name of the
arresting officer on an expunged
arrest report is excepted from
disclosure under the Open Records
Act, article 6252-17a, V.T.C.S.

Dear Mr. Keane:

You request a decision under the Open Records Act, article 6252-17a, V.T.C.S. Your letter provides the following background:

The DFW Airport Board has received a request for copies of the board's Department of Public Safety reports for three individuals who were arrested on November 28, 1985, on suspicion of burglarizing vehicles. The three were later released from custody and charges were never officially filed.

The three individuals retained an attorney who wrote to the airport board claiming that his clients were falsely imprisoned and seeking damages and attorney's fees in settlement of the cases. The attorney rejected the board's settlement offer and now seeks copies of the arrest reports containing the arresting officers' names, for the express purpose of suing the individual officers as well as the board.

You inform us that all records concerning the three individuals' arrests were expunged by court order dated March 27, 1986. However, you were able to obtain copies of the arrest reports from your insurer, to whom they had previously been forwarded. You believe that the arrest records are exempt from public disclosure pursuant to the litigation exception to the Open Records Act. V.T.C.S. art. 6252-17a, §3(a)(3).

We need not consider whether section 3(a)(3) of the Open Records Act, the litigation exception, permits you to withhold these records, because you are forbidden by law from disseminating expunged criminal records. Code Crim. Proc. art. 55.03. Article 55.03 of the Code of Criminal Procedure, as incorporated by section 3(a)(1) of the Texas Open Records Act, bars you from releasing these arrest records.

Chapter 55 of the Code of Criminal Procedure provides for the expunction of criminal records. Article 55.02 of the Code of Criminal

Procedure sets out the judicial procedure for expunction. When the order of expunction is final, it is sent to the state officials, agencies, and political subdivisions which have records or files subject to the order. On receipt of the order, each official or agency is required to

(1) return all records and files that are subject to the expunction order to the court or, if removal is impracticable, obliterate all portions of the record or file that identify the petitioner and notify the court of its action; and

(2) delete from its public records all index references to the records and files that are subject to the expunction order.

Code Crim. Proc. art. 55.02, §5(a). After entry of an expunction order, "the release, dissemination, or use of the expunged records and files for any purpose is prohibited. . . ." Code Crim. Proc. art. 55.03(1). Article 55.04 of the code sets out the penalty for violation of an expunction order:

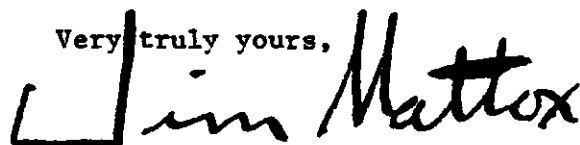
Section 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Sec. 2. A person who knowingly fails to return or to obliterate identifying portions of a record or file ordered expunged under this chapter commits an offense.

Sec. 3. An offense under this article is a Class B misdemeanor.

Article 55.03 prohibits the Dallas/Fort Worth Airport Board from releasing or disseminating the arrest records which were expunged by court order. Accordingly, those records are not subject to public disclosure under the Texas Open Records Act. The airport board may not provide the requested information in response to a request for information under the Open Records Act.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, flowing style. The first letter "J" is large and loops around the first part of the name. The last name "Mattox" is written in a similar cursive style.

J I M M A T T O X
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