



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

August 5, 1975

The Honorable Raymond W. Vowell
State Department of Public Welfare
John H. Reagan Building
Austin, Texas 78701

Open Records Decision No. 108

Re: Access to case file by
welfare recipient against whom
criminal charges relating to receipt
of benefits are pending.

Dear Commissioner Vowell:

An attorney for a welfare recipient against whom criminal charges are pending has requested to inspect the case file of the recipient. The request is made with reference to the Open Records Act, article 6252-17a, V. T. C. S.

You have declined to disclose the requested information. The position of the prosecuting attorney responsible for the criminal litigation is that the information should not be disclosed except through appropriate judicial process.

The information requested is clearly excepted from required public disclosure under the Open Records Act. We have previously held that information in welfare files is excepted under section 3(a)(1) as "information deemed confidential by law" by virtue of various federal and state welfare statutes restricting availability of this information. Attorney General Opinion H-249 (1974), and statutes cited therein.

The right of inspection asserted in this case is not truly based on the Open Records Act, but on the special interest of the welfare client in her own file, and more particularly, on her interest as a defendant in a criminal case in information pertinent to that case.

The Open Records Act is a general public disclosure statute giving any person access to governmental records without reference to his particular circumstances, motive, or need. The rights of specific persons under governmental investigation were not intended to be affected by this general Act, and must be determined by the law dealing with special access without reference to the Open Records Act. See Williams v. Internal Revenue Service, 345 F. Supp. 591, 594 (D. C. Del. 1972), aff'd, 479 F.2d 317 (3rd Cir. 1973), cert. den., 414 U. S. 1024 (1974).

As the federal courts have said in reference to the federal Freedom of Information Act, 5 U. S. C. § 552, we do not believe that the Open Records Act was intended to provide parties involved in litigation any earlier or greater access to information than was already available directly in such litigation. Benson v. United States, 309 F. Supp. 1144, 1146 (D. C. Neb. 1970); Barceloneta Shoe Corp. v. Compton, 271 F. Supp. 591 (D. C. Puerto Rico 1967); Verrazzano Trading Corp. v. United States, 349 F. Supp. 1401 (Ct. Cl. 1972); Williams v. Internal Revenue Service, supra.

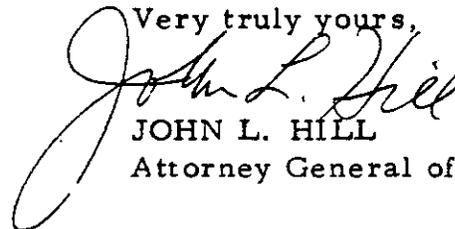
A defendant in a criminal prosecution has statutory and constitutional rights to access to certain information held by the state which relates to matters involved in the action against the person. Code Crim. Proc. art. 39.14 (discovery); Brady v. Maryland, 373 U.S. 83 (1963); Alcorta v. Texas, 355 U.S. 28 (1957); Barbee v. Warden, 331 F.2d 842 (4th Cir. 1964); Ashley v. State, 319 F.2d 87 (5th Cir. 1963).

In this case the responsible prosecuting official contends that it is not in the interest of the State to disclose the information except as ordered by the court. See section 3(a)(3) of the Open Records Act.

Thus, opposing interests in the information have been asserted in the context of criminal litigation, and the appropriate means by which such rights may be determined is a motion for discovery in the court in which the criminal action is pending. Code Crim. Proc. art. 39.14.

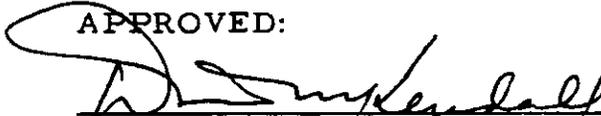
In summary, discovery, rather than the Open Records Act, is the appropriate means for access to information in a welfare recipient's case file concerning pending criminal charges against that individual.

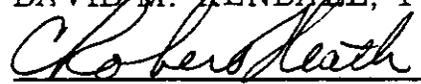
Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant

C. ROBERT HEATH, Chairman
Opinion Committee

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