



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOEY L. HULL  
ATTORNEY GENERAL**

**May 14, 1976**

**The Honorable N. Alex Bickley  
City Attorney  
City Hall  
Dallas, Texas 75201**

**The Honorable H. C. Perry  
Chief of Police  
City of Arlington  
Box 231  
Arlington, Texas 76010**

**The Hon. Lloyd W. Perkins  
City Attorney  
P. O. Box 1106  
Sherman, Texas 75090**

**The Honorable Hank Anderson  
County Attorney  
Court House  
Wichita Falls, Texas 76301**

**The Honorable Wilson E. Speir  
Director, Texas Department of  
Public Safety  
Box 4087  
Austin, Texas 78773**

**Open Records Decision No. 127**

**Re: Applicability of  
section 3(a)(8) (the law  
enforcement exception) of  
the Open Records Act to  
various records.**

**The Hon. Firmin Hickey, Jr.  
Bellaire City Attorney  
729 Bankers Mortgage Bldg.  
708 Main Street  
Houston, Texas 77002**

**The Hon. John C. Ross, Jr.  
City Attorney  
Room 203, City-County Bldg.  
El Paso, Texas 79901**

**Gentlemen:**

**Each of you has requested our decision on whether infor-  
mation is excepted from required public disclosure under  
section 3(a)(8) of the Open Records Act, article 6252-17a,  
V.T.C.S. This exception is applicable to**

**records of law enforcement agencies that  
deal with the detection and investigation  
of crime and the internal records and**

notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement.

We have deferred decisions in those cases where an arguable claim was made that the requested information fell within section 3(a)(8), because the constitutionality of this section has been at issue in litigation.

In Houston Chronicle Publishing Company v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975, writ ref'd n.r.e. at 19 Tex. Sup. J. 300, May 1, 1976), the court held section 3(a)(8) constitutional, dealt with the scope of the exception in relation to the constitutional right of access to information concerning crime in the community, and decided the applicability of the exception to specific records and information held by the Houston Police Department.

The court gave detailed descriptions of various records sought and held that the police blotter, show-up sheet, and arrest sheet are public records available to the press and public. The court held that the offense report and personal history and arrest record ("rap sheet") are excepted from required public disclosure by section 3(a)(8), but also held that the public and press have a constitutionally protected right to access to information maintained by law enforcement agencies relating to crime and criminal activities and that this right extends affirmatively to the information contained on the first page of the offense report as described in the opinion.

In its per curiam opinion refusing the application for writ of error in this case, the Texas Supreme Court said:

We agree with the opinion of the court below that neither the Texas Open Records Act nor the United States or Texas Constitutions requires disclosure of the complete records sought by the Houston Chronicle, and we therefore refuse the Chronicle's application for writ of error, no reversible error. Since the City of Houston has not filed an application for writ of error complaining of the court of civil appeals' judgment, it is the

opinion of the majority of the court that we reserve the question as to whether the press and public have a statutory or constitutional right to obtain all of the information which the court of civil appeals has held to be public information. Houston Chronicle Publishing Co. v. City of Houston, 19 Tex. Sup. Ct. J. 300 (May 1, 1976).

While the Supreme Court's opinion indicates that a question remains as to some of the information held to be public by the Court of Civil Appeals, the opinion of the latter court is the most authoritative judicial interpretation of section 3(a)(8) of the Open Records Act available, and this office will follow that interpretation. See Attorney General Opinion H-373 (1974).

We have prepared the following summary of the decision of the Court of Civil Appeals as applied to specific records and information.

I. INFORMATION AVAILABLE TO PUBLIC

A. Police Blotter

1. Arrestee's social security number, name, alias, race, sex, age, occupation, address, police department identification number, and physical condition.
2. Name of arresting officer.
3. Date and time of arrest.
4. Booking information.
5. Charge.
6. Court in which charge is filed.
7. Details of arrest.
8. Notation of any release or transfer.
9. Bonding information.

B. Show-up Sheet (chronological listing of persons arrested during 24-hour period)

1. Arrestee's name, age, police department identification number.
2. Place of arrest.
3. Names of arresting officers.
4. Numbers for statistical purposes relating to modus operandi of those apprehended.

- C. Arrest Sheet (similar chronological listing of arrests made during 24-hour period)
1. Arrestee's name, race, and age.
  2. Place of arrest.
  3. Names of arresting officers.
  4. Offense for which suspect arrested.

- D. Offense Report -- front page
1. Offense committed.
  2. Location of crime.
  3. Identification and description of complainant.
  4. Premises involved.
  5. Time of occurrence.
  6. Property involved.
  7. Vehicle involved.
  8. Description of weather.
  9. Detailed description of offense.
  10. Names of investigating officers.

II. INFORMATION NOT AVAILABLE TO PUBLIC

- A. Offense Report -- all except front page
1. Identification and description of witnesses.
  2. Synopsis of confession.
  3. Officer's speculation as to suspect's guilt.
  4. Officer's view of witness credibility.
  5. Statements by informants.
  6. Ballistics reports.
  7. Fingerprint comparisons.
  8. Blood and other lab tests.
  9. Results of polygraph test.
  10. Refusal to take polygraph test.
  11. Paraffin test results.
  12. Spectrographic or other investigator reports.

- B. Personal History and Arrest Record
1. Identifying numbers.
  2. Name, race, sex, aliases, place and date of birth and physical description with emphasis on scars and tattoos.

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3. Occupation, marital status and relatives.
4. Mugshots, palm prints, fingerprints, and signature.
5. Chronological history of any arrests and disposition.

Your specific requests for decisions on the applicability of the section 3(a)(8) law enforcement records exception may now be considered in light of this decision.

Mr. Bickley of Dallas and Mr. Perry of Arlington have received requests for information on the names and addresses of burglary victims. This information is available on the first page of offense reports and is public. The requesting parties are entitled to access to these records. However, the city is not obligated to compile or extract this information if it can be made available by giving the requestor access to the records themselves. See Open Records Decision No. 87 (1975).

Mr. Perkins of Sherman has received a request for access to the original reports of driving while intoxicated offenses. The managing editor of the Sherman Democrat seeks access to the original records in order to perform his own compilation of DWI statistics. The form used for such reports is the Texas Department of Public Safety "DWI/DUID Traffic Case Report," form HP-21 (Rev. 1-72). Some of the information on the form is excepted from required public disclosure. This includes the item calling for the criminal record of the driver, the identification of witnesses, the information concerning chemical tests and results thereof, and, on the back of the form, the interview of the suspect.

The city is not required to provide access to those parts of the form containing information excepted from disclosure by section 3(a)(8).

The correspondence on this matter indicates that the requestor wishes to insure the authenticity and accuracy of the information the city has offered to compile. We believe that this problem of the method by which an agency must separate excepted information from public information appearing on the same page is an administrative problem which this office cannot resolve. Perhaps the availability of the desired information from the original blotter, show-up sheet, or arrest sheet will render the matter moot.

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Mr. Anderson of Wichita Falls requests our decision concerning a request received by the sheriff from a private corporation asking for information as to "any record your department has on this individual." We understand this to be a request for a personal history and arrest record, or rap sheet, on a named individual. This information is excepted from disclosure by section 3(a)(8). Houston Chronicle Publishing Corp. v. City of Houston, 531 S.W.2d at 187-188.

Mr. Hickey requests our decision on behalf of the City of Bellaire in regard to a request received by the police department for access to the contents of the files concerning the requesting individual. We have said that the Open Records Act is a general public disclosure statute giving any member of the public access to governmental records without reference to his particular circumstances, motive or need. Open Records Decision Nos. 118 (1976), 108 (1975). The only special rights of access given by the Open Records Act are those afforded to governmental employees and to students to their own records. Secs. 3(a)(2); 3(a)(14). The individual here is afforded the same right of access by the Open Records Act that every other member of the public has to records held by the police department. However, we have said that the Open Records Act is but one means of securing information, either publicly or privately, and that the Act does not restrict a right of access based on special interest. Open Records Decision No. 106 (1975). See Attorney General Opinions H-249 (1974); H-231 (1974); Open Records Decision No. 111 (1975); No. 24 (1974); No. 18A at p. 3 (1974). In regard to access by an individual to criminal history record information maintained about him, see 42 U.S.C. § 3771(b); 28 C.F.R. §§ 20.21(g), 20.34.

The only decision we are authorized to make in this instance under section 7 of the Act is that the individual's criminal history record is excepted from required public disclosure by section 3(a)(8) of the Open Records Act. However, we note that the Act does not affect any special federal statutory right which an individual may have to information.

Mr. Ross of El Paso asks our decision on the applicability of section 3(a)(8) to information requested of the Police Department. The request is for photographs, and supplemental witness statements collected in connection with the investigation of an incident wherein a death occurred, apparently by carbon monoxide asphyxiation from a gas heater.

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On the basis of the facts presented, it is our understanding that the incident investigated did not lead to any criminal charges being filed. However, the purpose of the investigation and the taking of photographs and statements of witnesses was to determine whether a crime may have occurred.

The information requested here is the type which the court in the Houston Chronicle case held to be excepted from required public disclosure, in that it consists of evidentiary matters. The court said:

To open such material to the press and public in all cases might endanger the position of the State in criminal prosecutions by the use of such materials to the disadvantage of the prosecution. To have such materials open to the press and public in all cases might reveal the names of informants and pose the threat of intimidation of potential prosecution witnesses. Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d at 187.

Police investigations of incidents such as this death by other than natural causes are rarely closed completely, and what initially appears to be an accident may later be found to have involved a criminal act. Cases are not always closed by prosecution or a determination that no crime was involved.

The Open Records Act excepts from required public disclosure records of law enforcement agencies "that deal with the detection and investigation of crime." We do not believe that this exception was intended to be read so narrowly that it only applies to those investigative records which in fact lead to prosecution. We believe that it was also intended to protect other valid interests such as maintaining as confidential the investigative techniques and procedures used in law enforcement and insuring the privacy and safety of witnesses willing to cooperate with law enforcement officers. These interests in non-disclosure remain even though there is no prosecution in a particular case.

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It is our decision that the information requested is excepted from required public disclosure by section 3(a)(8).

Mr. Bickley of Dallas has received a request for all records of the City of Dallas and the Dallas Fire Department concerning a specified fire. Mr. Bickley contends that the investigatory records concerning this fire developed and maintained by the Arson Investigation Division of the Dallas Fire Department are excepted from required public disclosure by section 3(a)(8).

The records submitted clearly deal with the detection and investigation of crime. The issue is whether the Arson Investigation Division of the Dallas Fire Department is a "law enforcement agency" within the meaning of section 3(a)(8). This distinct division of the Dallas Fire Department is made up of peace officers. Code of Criminal Procedure, article 2.12 provides:

The following are peace officers:

. . . .

(7) each member of an arson investigating unit of a city, county or the state.

The primary purpose of the arson investigating unit is the detection and investigation of violations of the penal law.

We believe that the Arson Investigation Division of the Dallas Fire Department is a law enforcement agency within the meaning of section 3(a)(8), and that this exception is applicable to certain records held by this Division.

The information submitted with Mr. Bickley's letter includes completed forms designated "Dallas Fire-Department Investigation Fire Report" and "Investigation Report," witness statements and handwritten notes by investigators concerning witnesses' statements and the conduct of the investigation.

Guided by the Court's decision in the Houston Chronicle case that the press and the public have a right of access to information concerning crime in the community and to information relating to activities of law enforcement agencies, we believe that the press and public are entitled to access to information concerning fires in the community, including those involving arson. The Investigation Reports here include the time of the occurrence, the fire department's response, the location of the fire, how and by whom it was reported, a description of the building, estimates of the value of the building and its contents, whether and to what amount the property is insured by whom, and a description of any injuries or deaths that occurred with the name and age of the victim, nature of injury, conveyance and hospital, and date and time of death, as applicable. The investigation report also includes a detailed description of the cause and origin of the fire.

We believe the public is entitled to access to this information contained in the investigation reports.

However, certain portions of the reports include the investigator's opinion and conclusions concerning the names of suspects, the possible motive for an incendiary fire, evidence found, names of witnesses and summaries of their statements, and information concerning the description, background, and possible location of any suspect. We believe that this is the type of information the disclosure of which might impede an ongoing investigation or endanger the position of the State in criminal prosecutions, and as such is excepted from required public disclosure by section 3(a)(8). Of course, if formal charges are filed against a suspect, that information is public and should be disclosed.

Colonel Speir requests our decision on whether a Texas Department of Public Safety "Hit and Run Report" is excepted from public disclosure by section 3(a)(8). The requestor asked for information concerning a specific hit and run accident. The requestor was provided with a copy of the Department's "Texas Peace Officer's Accident Report," which is specifically made public under section 47, article 6701d, V.T.C.S. The requestor's specific request for the "Hit and Run Report" was denied on the ground that it is excepted by section 3(a)(8).

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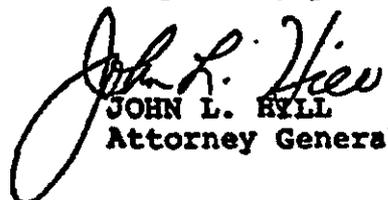
There is much duplication of information in the Accident Report and the front page of the Hit and Run Report. The only unique information in the Hit and Run Report is contained on the second page, and details the investigative steps taken in the particular case. This information on the second page is excepted from required public disclosure under section 3(a)(8) of the Open Records Act. In accordance with the Houston Chronicle decision, the front page of the report is public and should be made available.

Colonel Speir also requests our decision regarding whether a daily list of persons entering and leaving the Executive Mansion kept by the Department of Public Safety officers on duty is excepted from required public disclosure by section 3(a)(8).

The listing requested is compiled during each 24-hour period by the officer on duty on each of three shifts. It includes notations on the entry and exit of persons into and from the Mansion. The report is reviewed by the supervising sergeant and is normally disposed of by him. The Department of Public Safety officers are assigned to duty in the Executive Mansion for the purpose of providing security for the persons and property there. This listing is made in connection with this law enforcement purpose.

In Open Records Decision No. 22A (1974), we said that we believed that information which could assist an individual in simultaneously violating the law and avoiding detection is the type of information intended to be excepted from required public disclosure by section 3(a)(8) as an "internal record and notation maintained for internal use in matters relating to law enforcement." We believe that requiring disclosure of the listing and report involved here would disclose the security practices of the Department of Public Safety and could assist a person in simultaneously violating the law and avoiding detection. We believe that the requested information is excepted from required public disclosure by section 3(a)(8) of the Act.

Very truly yours,

  
JOHN L. EYLL  
Attorney General of Texas

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APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee

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