



The Attorney General of Texas

March 24, 1983

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Honorable Kathryn J. Whitmire
Mayor
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Houston, Texas 77251

Open Records Decision No. 366

Re: Availability under the
Open Records Act of records
relating to persons booked
into Houston City Jail since
June 1, 1982

Dear Ms. Whitmire:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the availability of records regarding persons booked into the Houston City Jail.

A reporter, by written request dated January 7, 1983, has requested access to the daily police blotter, show-up sheet, and arrest sheet maintained by police officials of the city of Houston. Specifically, he seeks the names of all persons booked into the city jail since June 1, 1982, their ages and addresses, the charges filed against them, if any, and the dates such persons were held in the jail.

This request basically seeks the disclosure of information held to be public 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. per curiam, 536 S.W.2d 559 (Tex. 1976). Since that decision and its exposition in Open Records Decision No. 127 (1976), this office has consistently held that information similar to that requested here is public, with certain narrow exceptions. See Open Records Decision Nos. 339, 333 (1982); 211 (1978). Although you acknowledge these decisions, you now question the validity of the Houston Chronicle ruling itself, and its value as precedent.

Your first contention is that the Texas Supreme Court, in refusing the application for writ of error, "questioned the soundness of the appellate court's decision as to what information should be deemed public." The supreme court declared:

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.

536 S.W.2d, at 561.

In Open Records Decision No. 339 (1982), this office itself stated:

The court of civil appeals in the Houston Chronicle case held that the press and public have a 'constitutionally protected right' to the front page of an offense report. The supreme court, in its refusal to grant a writ due to no reversible error, specifically reserved the question of 'whether the press and public have a statutory or constitutional right to obtain' this information. 536 S.W.2d at 561. The decision of the court of civil appeals fails to cite relevant authority for its finding of a 'constitutionally protected right' to the front page of an offense report; the United States Supreme Court has never recognized such a right; and no open records decision since the Houston Chronicle case has relied on such a right. We believe that the Supreme Court of Texas cast considerable doubt upon the judgment of the court of civil appeals that such a constitutional right exists. We have concluded that questions concerning the disclosure under the Open Records Act of particular offense report information must depend upon the provisions of the act itself rather than upon an asserted constitutional 'right to know.'

Although Open Records Decision No. 339 questioned the existence of a constitutional "right-to-know," it did not reject the results of the Houston Chronicle decision with respect to information of this type, and subsequent decisions of this office affirmed that result. See Open Records Decision Nos. 354, 350 (1982). We believe that the meaning of Open Records Decision No. 339 and later decisions is abundantly clear: information of this type ordinarily found on the

first page of an offense report is available to the public under the Open Records Act because it is not protected by the law enforcement exception of section 3(a)(8), except in circumstances where the release of particular information would "unduly interfere with law enforcement or crime prevention," see Ex parte Pruitt, 551 S.W.2d 706, 710 (Tex. 1977), or conflict with an individual's constitutional or common law right of privacy.

Disclosure of some of the requested information on the first page of an offense report might "unduly interfere with law enforcement" in a case involving undercover narcotics work in which certain defendants had been arrested but others remained at large. Premature release of the names of the individuals arrested might enable the others to avoid apprehension. Disclosure of certain first page offense report information might conflict with a constitutional or common law right of privacy when the complaint involves a serious sexual assault, and the victim is identified as the complainant. See Open Records Decision No. 339 (1982).

Your second argument is that disclosure of the type of information requested here will indirectly disclose criminal history record information. Federal regulations prohibit the disclosure of "criminal history record information," defined as:

information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. State and Federal Inspector General Offices are included.

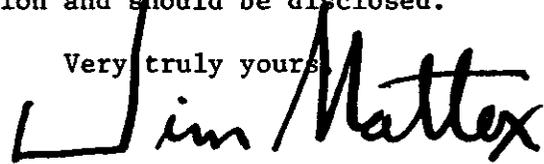
28 C.F.R. §20.3(b) (1982). A criminal justice agency which reveals such information is subject to a fine of up to \$10,000, as well as a cut-off of federal funds. 28 C.F.R. §20.25 (1982). This office has frequently recognized the importance of compliance with these federal regulations, see Open Records Decision Nos. 342 (1982); 283 (1981); 216 (1978).

The federal regulations, however, create an exception for the kind of information at issue here. 28 C.F.R. §20.20(b) (1982) provides:

The regulations in this subpart shall not apply to criminal history record information contained in: . . . (2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required to be made public, if such records are organized on a chronological basis. . . .

It is precisely such chronological records of entry that have been repeatedly recognized by this office as disclosable, with certain exceptions previously discussed. Undoubtedly an enterprising individual with access to a computer could, with access to such information, compile a criminal history record for any person, at least as to his arrests within a particular jurisdiction. Nevertheless, we must conclude that nothing in the federal regulations prohibits the disclosure of the records which are the subject of this request, and furthermore, that the Texas Open Records Act compels their disclosure. Except in the circumstances noted, it is therefore our decision that the names of all persons booked into the Houston City Jail since June 1, 1982, their ages and addresses, and charges filed against them, if any, and the dates such persons were held in the jail constitute public information and should be disclosed.

Very truly yours,



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