



**THE ATTORNEY GENERAL  
OF TEXAS**

June 15, 1987

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. Gerald C. Carruth  
Chief of Legal Services  
Texas Department of Public Safety  
5805 N. Lamar Boulevard  
Austin, Texas 78773

Open Records Decision No. 465

Re: Whether the Open Records Act, article 6252-17a, V.T.C.S., requires the Texas Department of Public Safety to release copies of DIC-26 form letters notifying people to appear for driver's license suspension hearings

Dear Mr. Carruth:

You have informed us that the Department of Public Safety (DPS) has received a request under the Open Records Act, article 6252-17a, V.T.C.S., to provide "on a periodic basis, weekly or daily, the names and addresses of all persons sent a DIC-26 form letter" by DPS. A DIC-26 form letter notifies a person to appear for an administrative driver's license suspension hearing. You have advised us that DPS retains a copy of each form letter in the appropriate driver's license file and enters into its computer records the fact that DPS sent a DIC-26 form letter to a particular person. DPS does not, however, maintain a list of persons who are sent a DIC-26 form letter during any particular period of time. Because DPS does not maintain that information on a separate list, this request is, in effect, a request for copies of the DIC-26 form letters sent during the relevant periods of time. See Open Records Decision No. 342 (1982) (Open Records Act does not require governmental body to prepare new information).

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1. The Open Records Act does not embrace information not in existence when a request is submitted to a governmental body. Open Records Decision No. 452 (1986). DPS, therefore, is not obliged to comply with a standing request to provide information "on a periodic basis, weekly or daily." Because, however, the requestor is likely to submit periodic requests for copies of DIC-26 forms sent by DPS, we will consider the availability of those documents.

DPS first argues that it need not make the DIC-26 form letters available at all because article 6687b, section 21, V.T.C.S., and article 6701h, section 3, V.T.C.S., provide the exclusive means for obtaining information from driver's license files. We disagree.

Article 6687b, section 21, V.T.C.S., contains the following provisions:

(d) The Department is authorized to provide information pertaining to an individual's date of birth, current license status, and most recent address as listed on the records of the Department upon written request and the payment of a Two Dollar (\$2.00) fee by a person who submits the individual's driver's license number or his full name and date of birth and who shows a legitimate need for such information.

(e) The Department is authorized to provide information pertaining to an individual's date of birth, current license status, most recent address, and reported traffic law convictions and motor vehicle accidents, by date and location, occurring within the immediate past three (3) year period when requested from the records of the Department on written request and payment of a Three Dollar (\$3.00) fee by a person who submits the individual's driver's license number or his full name and date of birth and who shows a legitimate need for the information. If requests for such information be prepared in quantities of one hundred (100) or more from a single person at any one time and upon data processing request forms acceptable to the Department such information may be provided upon payment of a fee of Two Dollars and Fifty Cents (\$2.50) for each individual request. The Department is authorized to provide the record information as provided in this subsection, certified by the Custodian of Records, on payment of a Five Dollar (\$5.00) fee for each request.

(f) The Department is authorized to provide information to the individual licensee pertaining to an individual's date of birth, current license status, most recent address, completion of an approved driver education course, the fact of (but not the reason for) completion of a driving safety course, and a listing of reported traffic law

violations, and motor vehicle accidents, by date and location, as listed on the records of the Department upon written request and the payment of a Three Dollar and Fifty Cents (\$3.50) fee by the individual licensee who submits the individual's driver's license number or his full name and date of birth. The Department is authorized to provide the record information as provided in this subsection, certified by the Custodian of Records, on payment of a Five Dollar (\$5.00) fee for each individual request... (Emphasis added).

Subsections (d), (e), and (f) of section 21 (hereinafter "the licensee information provisions") were added to article 6687b in 1959. Acts 1959, 56th Leg., ch. 311, at 674. The licensee information provisions have been amended since then, but the amendments have made only minor changes, mostly changes in the amount of the fees DPS may charge for the information provided. See Acts 1971, 62nd Leg., ch. 586, at 1934, 1940 (changed fees); Acts 1977, 65th Leg., ch. 619, at 1526 (amended subsection (f) to add the phrase "completion of an approved driver's education course"); Acts 1979, 66th Leg., ch. 610, at 1360 (amended subsection (f) to add the phrase "fact of (but not the reasons for) completion of a driving safety course"); Acts 1983, 68th Leg., ch. 345, §5, at 1821 (changed fees); Acts 1985, 69th Leg., ch. 239, at 1185 (repealed subsection (3) and changed fees); Acts 1986, 69th Leg., 3rd C.S., ch. 22, at 669 (reinstated subsection (e) and made minor changes to subsection (f)).

The licensee information provisions predate the Open Records Act, which was enacted in 1973. Acts 1973, 63rd Leg., ch. 424, at 1112. Before the enactment of the Open Records Act, a person had a right of access to records in the custody of governmental bodies only if a statute provided such a right or if the person could show a common-law right to access by showing a justiciable interest in the content of the records. Attorney General Opinion M-1172 (1972). We think that the purpose of the licensee information provisions was to afford to the public a qualified right of access to information in the files of the DPS and, perhaps more important, to authorize DPS to charge a fee for providing this information. See Attorney General Opinion H-796 (1976) (state agency may charge fee only when authorized to do so); see also Attorney General Opinion V-1426 (1952).

The subsequent enactment of the Open Records Act gave the public an affirmative, and very broad, right of access to information maintained by governmental bodies. Under the act a governmental body cannot deny access to public records unless they fall within one of the exceptions in section 3(a) of the act. Several early Open Records Decisions concluded that basic driver's license information was open to the public. Open Records Decision Nos. 65 (1975); 23 (1974). Open

Records Decision No. 65 held that names and addresses, among other information in driver's license files, are available. In regard to both requests, DPS indicated that the driver's license information sought was available. See generally art. 6252-17a, §6(15) (information is available under the Open Records Act if it is currently regarded by agency policy as open to the public). DPS's objection to disclosure in those instances was based not on the nature of the information, but on the practical problems involved in making the information available. Neither decision mentioned the licensee information provisions. Nonetheless, you now argue that the requestor should be required to obtain information in driver's license files by using the licensee information provisions. Such an interpretation of the applicable laws would have the effect of making information in driver's license files unavailable if it were not specifically available under the licensee information provisions.

As noted, the licensee information provisions were enacted at a time when the public had no right of access to public records, and they provided a means by which the public could obtain certain records in certain instances. Since the enactment of the Open Records Act, the public has had a right of access to public records unless the records fall within one of the exceptions in section 3(a) of the act. It would be odd to interpret a statute that was enacted as an access statute as excepting information from the scope of the Open Records Act, and we do not interpret the licensee information provisions as doing so.

Because both statutes govern access to information in driver's license files, we must determine whether they can be read in harmony. There are two points of possible conflict between the Open Records Act and the licensee information statutes: (1) both specify costs and (2) the licensee information provisions require a showing of "legitimate need" for the information sought, whereas section 5(b) of the Open Records Act prohibits the custodian of public records from inquiring about the purpose of a request.

As we have indicated, the legislature has, since the enactment of the Open Records Act, amended the licensee information provisions a number of times. Virtually all of the amendments have involved the amount of money to be charged by DPS for the information provided. We conclude, then, that the cost provisions of the licensee information provisions remain in effect today and apply when the information sought is within the terms of the licensee information provisions. See Attorney General Opinion Nos. MW-163 (1980); H-560 (1975). The costs set out in the licensee information provisions do not apply here, however, because the requestor is seeking the names of certain drivers, and a person requesting information under the licensee information provisions must furnish the names of the individuals about

whom he is seeking information. Thus, the requestor you ask about can obtain the information he seeks only under the Open Records Act.

The "legitimate need" provisions present a more difficult question. The licensee information provisions contain no guidelines for determining what constitutes a legitimate need. Because statutes must be read in harmony if at all possible, we conclude that "legitimate need" as used in the licensee information provisions must now be read in light of the Open Records Act. Reading those provisions together, we conclude that a person seeking information under the licensee information provisions has a legitimate need for the information for purposes of the licensee information provisions unless the information can be withheld under an exception listed in section 3(a) of the Open Records Act.

You also suggest that article 6701h, section 3, V.T.C.S., limits the right of access to information in driver's license files.

The Department shall, upon request and receipt of proper fees, furnish any person a certified abstract of the operating record of any person subject to the provisions of this Act, which abstract shall also fully designate the motor vehicles, if any, registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the Department shall so certify.

See also V.T.C.S. art. 6701h, §36 (fee for certified abstract of operating record is \$20). Article 6701h requires that DPS provide a certified abstract of an individual's operating record upon payment of the proper fee. The Open Records Act does not deal with the provision of certified documents. See V.T.C.S. art. 6252-17a, §9(a). Therefore, we see no conflict between the Open Records Act and article 6701h and no reason to read article 6701h as limiting access to driver's license records.

Your second question is whether DIC-26 letters may be withheld under section 3(a)(3) of the Open Records Act. In your request letter, you state:

In the alternative, it is submitted that the requested information should not be subject to public disclosure during the pendency of the administrative proceeding and resulting appeal, if any. The DIC-26 notice and petition for administrative hearing contain information relating to

litigation to which the state is or may be a party. Such information may be excepted from required public disclosure under section 3(a)(3) of the Open Records Act.

You have submitted a sample copy of the DIC-26 form letter. The first page notifies the party in question that he is to appear before a designated judge for a hearing on the issue of whether his driver's license should be suspended. The second page lists the charges. Prior decisions of this office establish that even if litigation is pending or reasonably anticipated, section 3(a)(3) does not except information from disclosure when its release would not adversely affect the interest of the governmental entity. Open Records Decision No. 416 (1984). We cannot see how the disclosure of the names and addresses of persons charged or the charges themselves would compromise the department's position in pending or contemplated litigation of either a judicial or a quasi-judicial nature. See Open Records Decision Nos. 368 (1983); 301 (1982) (section 3(a)(3) also applies in quasi-judicial proceedings). Section 3(a)(3), therefore, does not protect these forms.

Because copies of DIC-26 form letters are available under the Open Records Act, we must next address how DPS is to make those records available. You inform us that a copy of each letter sent is placed in the file of the licensed driver to whom it was sent. The Open Records Act does not require governmental bodies to "compile or extract . . . information if it can be made available by giving the requestor access to the records themselves." Open Records Decision No. 127 (1976); see also Open Records Decision Nos. 353 (1982); 243 (1980). Therefore, DPS might be able to fulfill its duty under the Open Records Act by allowing the requestor to search driver's license files for copies of DIC-26 form letters. If, however, confidential information is mingled with other information in those files, DPS cannot allow access to the files. See Open Records Decision No. 243 (1976). Furthermore, if the files contain information excepted from disclosure under section 3(a)(8), DPS would waive its right to claim that exception if it allowed access to the files. See Open Records Decision No. 162 (1977). In either case, DPS itself would have to extract the DIC-26 forms from the files.

You have told us that DPS would have to search through more than 10 million files to determine which ones contained DIC-26 letters. The Open Records Act, however, does not permit the custodian of records to consider either the cost or the method of supplying requested information in determining whether information should be disclosed. Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 687 (Tex. 1976). We do note, though, that since DPS enters into its computers the fact that a particular individual was sent a DIC-26 form letter, DPS should be able to

develop a computer program that would allow it to pinpoint the files that contained DIC-26 letters instead of searching more than 10 million files to find those letters. See Industrial Foundation, 540 S.W.2d at 687 (it is the responsibility of the custodian of records and the State Purchasing and General Services Commission to determine the least expensive method of supplying information under the Open Records Act). Cf. Attorney General Opinions JM-672 (1987); JM-292 (1984).

S U M M A R Y

The Department of Public Safety must make DIC-26 form letters contained in driver's license files available under the Open Records Act.

Very truly yours,



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