



**THE ATTORNEY GENERAL  
OF TEXAS**

June 28, 1988

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. David M. Douglas  
General Counsel  
Texas Department of Public  
Safety  
P. O. Box 4087  
Austin, Texas 78773-0001

Open Records Decision No. 498

Re: Whether class-type list-  
ings from driver's license  
record files are protected  
from required public disclo-  
ure under section 21(j)(3) of  
article 6678b, V.T.C.S., in  
conjunction with section  
3(a)(1) of the Open Records  
Act, article 6252-17a,  
V.T.C.S. (RQ-1341)

Dear Mr. Douglas:

You ask whether the Open Records Act, article 6252-17a, V.T.C.S., requires the Department of Public Safety to make available "lists of persons scheduled for administrative hearings to suspend their drivers license for excessive violations within a specified time frame." Specifically, you ask whether Open Records Decision No. 465 (1987) governs this request.

Open Records Decision No. 465 (ORD-465) considered whether the Department of Public Safety was required to provide a list of all persons who received a DIC-26 form letter during a particular period of time.<sup>1</sup> We pointed out that the Open Records Act deals with the availability of existing records; it does not require a governmental body to create records. Because the department informed us that it does not maintain a list of persons who receive DIC-26 form letters, we considered the request at issue in ORD-465 to be one for copies of DIC-26 form letters sent to particular

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1. The department explained that it used a DIC-26 form letter to notify a person to appear for an administrative hearing to determine whether his or her driver's license would be suspended.

licensees. We concluded that DIC-26 form letters sent to individuals were available under the Open Records Act.

A more difficult issue was whether the department had to identify and compile any such documents sent out during a particular period of time. We noted that the department might be able to comply with the request by allowing the requestor to search the department's files for the documents. We pointed out, however, that if the files contained confidential information, the department could not permit the requestor to search the files himself. Also, if the department permitted the requestor to search the files, it would waive any right it might have to withhold information in the files under section 3(a)(8) of the Open Records Act. In those instances, we concluded, the department would be required to identify the files that contained DIC-26 form letters sent during a particular period of time and to make those documents available.

Apparently as a response to Open Records Decision No. 465, the 70th Legislature added subsection (j) to section 21 of article 6687b, V.T.C.S. See Bill Analysis, Tex. S.B. No. 161, 70th Leg. (1987) (bill is intended to restrict release of information). Section (21)(j) provides:

(1) In addition to the provisions of this section for the release of individual driver's license information, the department may provide a magnetic tape of the names, addresses, and dates of birth of all licensees contained in the department's basic drivers' license record file. In addition, on a periodic basis the department is authorized to provide purchasers of this information any additions of names, addresses, and dates of birth.

(2) Before the department may release the information described in Subdivision (1) of this subsection, the purchaser must agree to delete the name, address, and date of birth of any person whose name is also included on the mail or telephone preference list maintained by a recognized trade association which is used to remove the name of any individual who has requested that the individual's name not be made available for solicitation purposes.

(3) The department is not authorized to provide class-type listings from the basic drivers' license record file to any person or business; provided, however, such information may be made available to an official of the federal government, the state, a city, town, county, special district, or other political subdivision for official governmental purposes only. (Emphasis added.)

Subsection (j)(3) was apparently intended to overrule the holding of ORD-465 that the department is required, in some circumstances, to pinpoint the drivers' license files that contain a certain type of document in order to make those documents available under the Open Records Act. See Open Records Decision No. 65 (1973) (using phrase "class type" information).

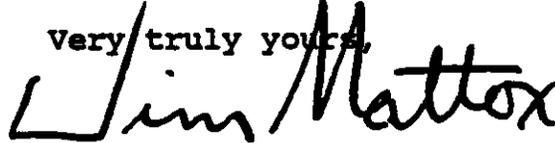
You now ask whether the department must comply with a request for lists of persons scheduled for administrative hearings to suspend their drivers' licenses. This appears to be a request for the same information that was requested in ORD-465. As indicated, ORD-465 did not state that the department was required to create a list. However, ORD-465 did state that, in some circumstances, the department would be required to identify files that contain a certain type of document and to make those documents available. That requirement is little different in effect from a requirement to create a specific class list, and we think it is that requirement that the legislature intended to overturn when it added subsection (j) to section 21 of article 6687b. Therefore, V.T.C.S. article 6687b, section 21(j)(3) prohibits the department from identifying the driver's license files that contain a particular type of document or information in order to make those documents or information available under the Open Records Act. Consequently, you may not comply with the request you have submitted to us.

#### S U M M A R Y

Article 6687b(21)(j)(3) prohibits the Texas Department of Public Safety from providing "class-type listings from the basic driver's license record file to any person or business." That provision overturns the holding in Open Records Decision No. 465 (1987) that the department is required to identify the driver's license files that contain a certain type of document in order

to make the documents available to a person  
who requests them under the Texas Open  
Records Act, article 6252-17a, V.T.C.S.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, prominent "J" and "M".

J I M M A T T O X  
Attorney General of Texas

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