



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

September 6, 1990

Ms. Mary Ann Courter
Assistant General Counsel
Department of Public Safety
5805 N. Lamar Blvd.
Box 4087
Austin, Texas 78773-0001

Open Records Decision No. 567

Re: Whether investigatory files on applicants for racetrack licenses are excepted from disclosure under the Open Records Act, article 6252-17a, V.T.C.S. (RQ-1986)

Dear Ms. Courter:

The Department of Public Safety (hereinafter the "department") received two requests for its investigatory files on several applicants for racetrack licenses. The department seeks to withhold these investigatory files from required public disclosure under section 3(a)(1) of the Open Records Act, in conjunction with article 179e, section 2.15, V.T.C.S., the Texas Racing Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 2.15 of article 179e provides as follows:

All records of the commission that are not made confidential by other law are open to inspection by the public during regular office hours. The contents of the investigatory files of the commission, however, are not public records and are confidential except in a criminal proceeding or in a hearing conducted by the commission.

In Open Records Decision No. 548 (1990), this office concluded that section 2.15 deems confidential the investigatory files of applicants for racetrack licenses in the possession of the Racing Commission. You ask whether the investigatory files prepared for the Racing Commission by the department, and in the possession of the department, are also within the scope of the confidentiality protection of section 2.15.

The Texas Racing Commission has adopted a rule requiring that an investigatory file be established on each applicant for a racetrack license. 16 T.A.C. § 303.10; see art. 179e § 6.06, V.T.C.S. (authority to adopt rules relating to license applications). The Department of Public Safety, by agreement with the Racing Commission, performs the investigations. The Criminal Intelligence Service of the department collects information, conducts interviews, and evaluates the information about the applicants. The final product of the investigation is what is described as the "DPS Report" in one of the request letters.

In preparing an investigative report for the Racing Commission, the department acts as the commission's agent. The information the department collects or maintains on behalf of the Racing Commission is properly regarded as records of the agency served, in this case, the Texas Racing Commission, and not of the Department of Public Safety. An independent governmental agency may be considered to be acting as the agent of another governmental entity even though no statute expressly denominates one as the agent of the other. Attorney General Opinion JM-919 (1988). Exceptions to disclosure of information in the hands of the principal may also apply to such records in the hands of the agent. See Attorney General Opinion JM-446 (1986) and cases cited therein. It is well established that confidential material can be transferred between state agencies without losing its confidential character under the Open Records Act. See Attorney General Opinions H-917, H-836 (1976). Since section 2.15 of article 179e makes confidential the investigative records of the commission when held by the commission, we conclude that those investigative records are no less confidential in the hands of its agent, the Department of Public Safety.

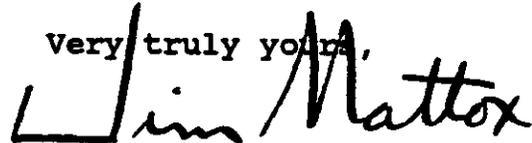
The department also possesses copies of the application itself, which is subject to disclosure pursuant to Open Records Decision No. 522 (1989). The Department of Public Safety disclosure form and other documents obtained pursuant to the department's investigation, including the background disclosure information, constitute the investigative files of the commission, which under section 2.15 are not public.

As we conclude that the investigative files of applicants for racetrack licenses in the possession of the Department of Public Safety are protected from disclosure under section 2.15 as incorporated into section 3(a)(1) of the Open Records Act, we do not address your claim that they are excepted from disclosure under section 3(a)(8).

S U M M A R Y

The investigative files of the Texas Racing Commission prepared by the Department of Public Safety are confidential under section 2.15 of article 179e, V.T.C.S., whether in the custody of the Texas Racing Commission or the Department of Public Safety. They are accordingly excepted from public disclosure under the Open Records Act.

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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First Assistant Attorney General

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