



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

January 13, 1989

Mr. David M. Douglas  
Texas Department of Public Safety  
5805 N. Lamar Blvd., Box 4087  
Austin, Texas 78773-0001

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5247; this decision is OR89-023.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

You received a request for information that you advise is referred to in the department as "Type 5 Driver Record Forms." Compliance with the request would entail creation of a class-type list of information. You assert that the information is exempt under sections 3(a)(8), 3(a)(11), and 3(a)(1) in conjunction with V.T.C.S. article 6687b, section 21(j)(3). Because this office believes the requested information is exempt from disclosure under section 3(a)(1), your other arguments will not be addressed.

Section 3(a)(1) protects from required disclosure:

information deemed confidential by law,  
either Constitutional, statutory, or by  
judicial decision.

This section incorporates specific statutes that protect information from public disclosure. The terms of the

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particular statute control the scope of protection. The primary requirement is that statutorily created confidentiality must be express. See Open Records Decision Nos. 351, 347 (1982).

You cited article 6687b, section 21(j)(3), V.T.C.S. This statute does not create confidentiality per se, but does state that the department is without authority to provide class-type listings to any person or business. This office has held that the statute precludes the department from providing class-type listings from the basic drivers' license record file. Open Records Decision No. 498 (1988). In accordance with that decision, you need not provide the information requested.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-023.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee*

Open Government Section  
of the Opinion Committee  
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