



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 15, 1989

Mr. John C. Ross, Jr.
City Attorney
City of Lubbock
P. O. Box 2000
Lubbock, Texas 79457

Dear Mr. Ross:

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# 5586; this decision is designated OR89-85.

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 the governmental body has not raised.

The Lubbock Police Department received a request from the Lubbock Avalanche-Journal newspaper for the names and addresses of the victims of approximately 141 burglaries cleared by the arrest of a certain individual. It also requested a list of items taken during each of the burglaries and a list of any recovered property. Shortly thereafter, the Dallas Times Herald newspaper submitted to the police department a request for, among other things, the offense reports prepared for each of the burglaries cleared by the arrest of the same individual and arrest reports relating to that individual. Your office consolidated these requests and now asks for our decision pursuant to section 7 of the Open Records Act.

In Open Records Decision No. 409 (1984) this office determined that the common law right of privacy does not protect the names of burglary victims from disclosure under the Open Records Act. The location of a crime and the property involved in a crime, as noted on the front page of an offense report, is also not excepted from disclosure. See Houston Chronicle Publishing Co. 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); Open Records Decision Nos. 408 (1984), 127 (1976). The names of burglary victims may be withheld under section 3(a)(8) of the act if release of the names would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 409 (1984). For example, certain burglaries may reveal a pattern which, if discovered, might reveal an investigative technique. Id. In letter ruling OR88-078 it was determined that a police department could withhold the time of day household burglaries occurred because such information, coupled with the addresses of the burglarized homes, would amount to an open invitation to future crimes. Such determinations, however, must be made on a case-by-case basis. You have not demonstrated such a pattern here.

The city acknowledges the requestors' right to inspect copies of the case reports compiled for each of the burglaries in question, and one requestor has expressed a willingness to extract the information from the records of the police department. Yet, for various reasons, the city objects to providing the requestors with the information that will permit them to request the separate case reports for these burglaries. For the reasons set forth in the following paragraphs, we conclude that the information requested by the two newspapers is not excepted from disclosure under the Open Records Act.

You raise arguments under sections 3(a)(1) and 3(a)(8) of the Open Records Act. Section 3(a)(1) protects information deemed confidential by law or judicial decision. You contend that disclosure of the requested information is prohibited by several federal regulations, a provision of the Texas Family Code, and the informer's privilege.

Several of your arguments concern the police department's participation in the federal criminal history record information system. You claim that release of the requested information would violate federal regulations limiting the dissemination of criminal history record information, jeopardize the police department's future participation in the federal information system, and subject

the city to a possible fine of up to \$10,000. These arguments, of course, presume that the requested information consists of criminal history record information.

The term "criminal history record information" is defined to include

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.

28 C.F.R. § 20.3(b). The information requested -- the names and addresses of burglary victims and items of property stolen and recovered -- reveals nothing about the arrest, detention, formal criminal charge, disposition, sentencing, correctional supervision, or release of any individual. The requested information therefore cannot fairly be characterized as "criminal history record information." It might be argued that release of the names and addresses of burglary victims might somehow indirectly disclose or lead to the disclosure of criminal history information, but this possibility does not prohibit disclosure of the requested information. See Open Records Decision No. 408 (1984). Furthermore, the federal regulations upon which you rely permit dissemination of criminal history information to "[i]ndividuals and agencies for any purpose authorized by statute, . . . or court rule, decision, or order, as construed by appropriate State or local officials or agencies." 28 C.F.R. § 20.21(b)(2). Thus, even if it is assumed that the information requested in this matter is criminal history information, it can still be disclosed pursuant to the Open Records Act and decisions rendered under it. See 28 C.F.R. Part 20, Appendix. Accordingly, we conclude that the federal regulations limiting dissemination of criminal history information do not prohibit disclosure of the requested information.

A number of your arguments for withholding the requested information are based on the age of the individual providing the information to the police department. You contend that because the individual was less than seventeen years old at the time the majority of the offenses in which he is implicated or about which he has given information occurred, such information may be withheld from disclosure.

You claim that subsection (a) of section 51.14 of the Family Code prohibits the release of the information contained in Exhibit 3. That subsection provides the following:

(a) Except as provided by Subsection (e) of this section, all files and records of a juvenile court, a clerk of court, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) an attorney for a party to the proceeding;

(3) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(4) with leave of juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

We reject this argument. By its clear terms, subsection (a) applies only to records of "a juvenile court, a clerk of court, or a prosecuting attorney" and only if the records relate to a child who is a party to a proceeding under title 3 of the Family Code. The information requested by the two newspapers appears on records of a police department, not on the records of the officials listed in subsection (a). You do not establish that any proceeding under title 3 of the Family Code is pending with respect to the individual who provided the information contained in Exhibit 3. Furthermore, because the individual is now more than 18 years of age, he is not a "child" for purposes of title 3. Fam. Code § 51.02(1) (definition of "child"). Accordingly, section 51.14(a) of the Family Code is inapplicable.

You also cite the federal regulation codified at 28 C.F.R. section 20.21(d), which generally prohibits dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need of

supervision. Such records containing criminal history information may be disseminated to noncriminal justice agencies only to the extent that there is an agreement with the criminal justice agency for the provision of services or research purposes unless dissemination is authorized by statute, court order, rule, or court decision. You provide no information confirming the pendency of any proceedings relating to the adjudication of this or any other individual as a juvenile. It is unlikely that the individual providing the information to the police department will face adjudication proceedings in juvenile court since he has already been indicted and convicted as an adult for burglary of a building. See Exhibit 2 (judgment in cause no. 88-407,996). We therefore reject your argument concerning the applicability of 28 C.F.R. section 20.21(d).

Your final argument for non-disclosure under section 3(a)(1) rests on the applicability of the informer's privilege. You observe that the informer's privilege concerns the disclosure of only the name of an informant and suggest that information provided by the informant is not subject to disclosure. This ignores the fundamental command of the Open Records Act that all information held by governmental bodies is open unless it falls within one of the act's exceptions to disclosure. The informer's privilege protects only the identity of informers and their statements to the extent that such statements reveal the identity of the informers. Open Records Decision No. 515 (1989). The privilege does not otherwise confer confidentiality on information that is clearly subject to disclosure. The identity of the individual in question is already known to the public as a result of the numerous newspaper articles and police statements concerning this matter. The informer's privilege, therefore, is inapplicable.

You also claim section 3(a)(8) as an exception to disclosure of the requested information. Much of your argument, however, discusses the disclosure of information from a statement provided to the police department by the individual in question. The requestors in this instance, however, do not ask for access to the statement or for information from the statement. Rather, all that is sought are the names and addresses of burglary victims and property stolen and/or recovered in the burglaries cleared by the arrest of the individual who gave the statement.

The bulk of the information requested in this matter has already been judicially determined to be subject to disclosure against a claim that the information was excepted by section 3(a)(8). See Houston Chronicle Publishing Co. v.

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City of Houston, supra. The names of the victims of the burglaries, the location of the burglaries, and the inventory of the property stolen during the burglaries appear in the police department's case reports prepared at the time the offenses were reported. This information must be disclosed. Id.; Open Records Decision Nos. 408 (1984), 127 (1976). The police department may comply with the request by providing copies of or access to the information as it appears on the individual case reports in each of the burglaries cleared by the arrest of the individual in question.

The police department informed your office that there is no single document that discloses which of the property stolen in the burglaries has been recovered by the police. The Open Records Act does not require a governmental body to prepare new information. Open Records Decision No. 342 (1982). However, where a minimal computer search will retrieve existing information stored on a computer, a governmental body is required to comply with the request for information. See Attorney General Opinion No. JM-672 (1987). We are not persuaded that information describing the property recovered by the police is excepted from disclosure by section 3(a)(8). Consequently, the police department is required to disclose such information if it may be retrieved through a minimal search of the department's records.

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 OR89-85.

Very truly yours,

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of the Opinion Committee

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