



**THE ATTORNEY GENERAL
OF TEXAS**

April 3, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. David M. Douglas
General Counsel
Texas Department of Public Safety
P. O. 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# 5791; this decision is OR89-100.

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.

The Texas Department of Public Safety (DPS) received an open records request for the "Abandoned/Stored Vehicle File" in the Texas Crime Information Center (TCIC), a data base maintained by the DPS that lists recovered stolen vehicles. You contend that section 3(a)(8) of the Open Records Act protects this file from required public disclosure.

Section 3(a)(8) excepts from required public disclosure records of law enforcement agencies that deal with the detection, investigation, and prosecution of crime. Whether this exception applies to particular records depends on whether their release would "unduly interfere" with law enforcement or prosecution. Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). Open Records Decision No. 434 (1986). One of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. See Open Records Decision No. 133 (1976). Whether disclosure of particular records will unduly interfere with

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crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981).

You contend that disclosing the lists of recovered vehicles would interfere with law enforcement efforts in several ways. "Sting" operations conducted by law enforcement agencies may be compromised if those who are selling stolen vehicles discover that the buyers of the vehicle are actually undercover officers, thus endangering the safety of the officers as well. You do not indicate how a list of vehicles, stored for a variety of reasons, would reveal this information. You claim that disclosure of these lists will also afford fugitives who commit multiple automobile thefts the opportunity to determine whether and to what degree law enforcement agencies are tracking them.

Although the arguments you raise may be valid in particular instances, they are too general and speculative to apply to all listings of vehicles whose the recovery of which is not a part of a larger law enforcement investigation. As stated above, the applicability of section 3(a)(8) must be determined on a case-by-case basis. In fact, you have not reasonably demonstrated that any of the listings in the recovered vehicle file actually fall within the circumstances described above.

The DPS may want to consider creating a separate computer file that would consist solely of a listing of recovered vehicles that reflect on-going law enforcement investigations; such a file could more clearly come within the protection of section 3(a)(8). But because you have not demonstrated that any identifiable portion of the "Abandoned/Stored Vehicle File" comes within the protection of section 3(a)(8), the file must be released.

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 OR89-100.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/bc

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Copies to: Paul A. Heidt, Sr.
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2500 Citywest Blvd., Suite 300
Houston, Texas 77042

Ref: ID# 5791

ID# 5834