



**THE ATTORNEY GENERAL
OF TEXAS**

April 12, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Ms. Rebecca Baker
Assistant Criminal District Attorney
2nd Floor, Lubbock County Courthouse
P. O. Box 10536
Lubbock, Texas 79408

Dear Ms. Baker:

You inform this office that a Lubbock County Jail employee allegedly released certain documents in an unauthorized manner. You submitted copies of the released documents to this office and asked whether the dissemination of those documents constitutes a violation of section 10 of the Open Records Act, article 6252-17a, V.T.C.S. The documents that the employee allegedly released consist of information from a criminal justice computer program maintained by the Sheriff and a "book-in card" obtained from a Sheriff's Office "shuck," which contains a complete list of offenses for which the Sheriff has handled individuals. This decision is OR89-120.

Criminal history record information (CHRI) consists of both "conviction" and "nonconviction" data. Conviction data consists of all notations of criminal transactions related to an offense that resulted in a conviction, guilty plea, or a plea of nolo contendere, while nonconviction data consists of arrest information that does not reveal the law enforcement agency's disposition of the criminal charges. See 4 Tex. Reg. 3767 (1979) (Crim. Justice Div., Rule 001.55.21), repealed by 7 Tex. Reg. 64, 65 (1982). After reviewing the released documents, this office has determined that they contain nonconviction data.

Section 3(a)(1) of the Open Records Act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The dissemination of CHRI from state and local criminal information systems is governed by federal regulations. Section 20.21 of Title 28 of the Code of Federal Regulations restricts the dissemination of CHRI contained in state and local criminal information systems maintained by agencies that are funded in whole or in part by the Law Enforcement Assistance Administration (LEAA) subsequent to July 1, 1973. The dissemination of nonconviction data is limited to:

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(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;

(2) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate State or local officials or agencies;

(3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data consistent with these regulations, and provide sanctions for violation thereof;

(4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, insure the confidentiality and security of the data consistent with these regulations and with section 524(a) of [the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. 3701, et seq.] and any regulations implementing section 524(a), and provide sanctions for the violation thereof. These dissemination limitations do not apply to conviction data.

28 C.F.R. § 20.21(b) (1988). You indicate that the documents in question were released to persons other than those listed above.

Section 10 of the Open Records Act provides:

(a) Information deemed confidential under the terms of this Act shall not be distributed.

. . . .

(e) Any person who violates Section 10(a) or 10(b) of this Act shall be deemed guilty

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of a misdemeanor and upon conviction shall be punished by confinement in the county jail not to exceed six (6) months or fined in an amount not to exceed \$1,000, or by both such fine and confinement. A violation under this section constitutes official misconduct.

Assuming that all the necessary elements of a criminal offense are proven, the unauthorized release of nonconviction data constitutes a violation of section 10 of the Open Records Act.

Please note, however, that although the court of civil appeals held that nonconviction data is protected from required public disclosure pursuant to section 3(a)(8) of the Open Records Act, 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), section 3(a)(8) is a permissive exception: law enforcement agencies are not required to withhold information protected by section 3(a)(8). The court in Houston Chronicle failed to address the fact that federal regulations provide that this type of information is confidential and that law enforcement agencies that release this type of information in an unauthorized manner are subject to certain sanctions. The information at issue is not, therefore confidential by virtue of section 3(a)(8), but rather by the federal regulations and by privacy under section 3(a)(1) of the Open Records Act. See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press, No. 87-1379 (March 22, 1989) CCH S. Ct. Bull. p. B1774.

This office does not address whether the individual who allegedly released the information in question is in fact guilty of any wrongdoing. This will depend on proof of all of the elements of a criminal offense. This decision simply determines that the information at issue may be withheld under section 3(a)(1) as information deemed confidential by law. If you have any questions with regard to this letter, please refer to OR89-120.

Yours very truly,

Open Government Section
of the Opinion Committee 

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

JSR/RWP/bc

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