



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

July 6, 1989

Honorable Tim Curry  
Criminal District Attorney  
Tarrant County  
200 West Belknap Street  
Fort Worth, Texas 76196-0201

Dear Mr. Curry:

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# 6541; this decision is OR89-191.

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 Tarrant County Jail received an open records request for the "names, all charges, date of incarceration, code number and location (old jail, new jail, or Cold Springs) of all prisoners" within the Tarrant County jail system. You state that the county released to the requestor all of the requested information except for the exact location of prisoners within the system, which you contend is excepted from required public disclosure by subsections 3(a)(1), 3(a)(3), 3(a)(7), and 3(a)(8) of the Open Records Act. You also ask this office to confirm that the inmates' criminal history information is not public information.

Section 3(a)(8), known as the "law enforcement" exception, excepts from required public disclosure law enforcement records that "deal with the detection, investigation, and prosecution of crime." In 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), the court of civil appeals established that the Personal History and Arrest Record, which consists of the individual's criminal history, should remain closed to the public on two grounds: 1) the records fall under the protection of section 3(a)(8) of the Open Records Act as records "maintained for . . . internal use in matters relating to law enforcement," id. at 185, and 2) the release of these records, which often contain inaccurate or misleading entries, could result in false conclusions as to the individual's criminal past, thus raising "false light" privacy interests protected by section 3(a)(1). Id. at 188; see also Open Records Decision No. 438 (1986) (general discussion of "false light" privacy). You should, therefore, withhold the criminal history of all inmates in the Tarrant County Jail pursuant to section 3(a)(8).

You argue that section 3(a)(8) also protects each of the inmates' individual cell assignments within the jail system. Release of this type of information, you contend, would endanger the safety of certain inmates and could facilitate the likelihood of escape. Although this office might agree that section 3(a)(8) protects this type of information if we were required to address the issue, we note that the requestor is not seeking the precise location of each inmate, but merely the inmate roster of each of the jail system's three facilities.

You state, however, that the jail system does not maintain separate rosters for each of the facilities and that there is only one common roster listing all inmates alphabetically. It is well established that the Open Records Act does not require that a governmental body obtain information not in its possession or that it prepare new information in response to a request. Open Records Decision No. 445 (1986). On the other hand, some compilation of information may be required under the act. Attorney General Opinion JM-672 (1987). For example, in Attorney General Opinion JM-672, this office indicated that a minimal computer search may be required for existing information stored in computers. If separate rosters can be compiled by a minimal manipulation of information already in your computer, you must compile these lists.

If the separate rosters can easily be compiled, they would be of such a general nature that they would not be subject to the same section 3(a)(8) considerations as is the exact location of an inmate within jail. You may not withhold this type of information pursuant to section 3(a)(8). See Open Records Decision No. 127 (1976). For example, on

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the list of prisoners with specific cell assignments, the list can be released with the cell assignment column deleted.

Similarly, your arguments that subsections 3(a)(1), 3(a)(3), and 3(a)(7) of the act protect this information are equally inapplicable because they center around the subsequent danger of releasing the inmates' individual cell assignments to the general public. For example, you contend that section 3(a)(7), pursuant to a protective order issued in Markum v. Tarrant County, No. 348-118999 (348th Judicial Dist.), currently pending in Tarrant County District Court, protects this information. It is apparent to this office, however, that the protective order restricting access to inmates' cell assignments was the result of the court's concern for the inmates' safety. As indicated, the requestor does not seek cell assignments.

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 OR89-191.

Yours very truly,

*Open Government Section  
of the Opinion Committee* 

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

JSR/RWP/bc

cc: Bob Malburg  
400 West Seventh Street  
Fort Worth, Texas 76102

Ref.: ID# 6541