



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

August 15, 1989

Ms. Mary Ann Courter  
Legal Counsel  
Texas Department of Public Safety  
P. O. Box 4087  
Austin, Texas 78773-0001

Dear Ms. Courter:

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# 6437; this decision is OR89-251.

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 Department of Public Safety (the department) received a request for "access to and a magnetic tape copy of the currently licensed drivers and their respective records kept by the State of Texas." You state that the department maintains a magnetic tape of names, addresses, and dates of birth of all licensees contained in a basic driver's license record file, but that the department does not maintain the "driving record" files of all licensed drivers in the State of Texas on magnetic tape. You argue that the information, in the form requested, is excepted from disclosure by section 3(a)(1) of the Open Records Act in conjunction with article 6687b, V.T.C.S.

Section 3(a)(1) protects "information deemed confidential by law," including statutory law. This section incorporates specific statutes that protect information from public disclosure. The language of the relevant confidentiality statute controls the scope of the protection. As will be shown in the following discussion, although article 6687b is not a confidentiality statute, it controls access to the information requested.

Article 6687b, V.T.C.S., governs the issuance of driver's, chauffeur's and commercial operator's licenses. Section 21 provides in relevant part:

(e) The Department is authorized to provide information pertaining to an individual's date of birth, current license status, most recent address, and reported traffic law convictions and motor vehicle accidents, by date and location, occurring within the immediate past three (3) year period when requested from the records of the Department on written request and payment of a Three Dollar (\$3.00) fee by a person who submits the individual's driver's license number or his full name and date of birth and who shows a legitimate need for the information. If requests for such information be prepared in quantities of one hundred (100) or more from a single person at any one time and upon data processing request forms acceptable to the Department such information may be provided upon payment of a fee of Two Dollars and Fifty Cents (\$2.50) for each individual request. The Department is authorized to provide the record information as provided in this subsection, certified by the Custodian of Records, on payment of a Five Dollar (\$5.00) fee for each request.

. . . .

(j)(1) In addition to the provisions of this section for the release of individual driver's license information, the department may provide a magnetic tape of the names, addresses, and dates of birth of all

licensees contained in the department's basic drivers' license record file. In addition, on a periodic basis the department is authorized to provide purchasers of this information any additions of names, addresses, and dates of birth.

(2) Before the department may release the information described in Subdivision (1) of this subsection, the purchaser must agree to delete the name, address, and date of birth of any person whose name is also included on the mail or telephone preference list maintained by a recognized trade association which is used to remove the name of any individual who has requested that the individual's name not be made available for solicitation purposes. (Emphasis added.)

Apparently, you argue that access to a list of currently licensed drivers in Texas with their respective driving records is controlled by section 21(e) rather than section 21(j) of article 6687b.

Article 6687b affords the public only a qualified right of access to license information in the files of the Department of Public Safety, see Open Records Decision No. 465 (1987); cf. Open Records Decision No. 498 (1988). Section 21 prescribes the manner and method through which driver's license information must be obtained. Section 21(e) requires that the requestor identify specific licensees about whom driving histories are sought and show a legitimate need for the information. Once the department has received a specific request about a particular licensee, it may then provide information about that licensee's driving record.

In contrast, section 21(j)(1) of article 6687b authorizes the department to provide a magnetic tape copy of the names, addresses, and dates of birth of all licensees in the department's basic driver's license record file. Subsection (j)(1) does not require that a requestor specifically identify a particular licensee; rather it provides that basic information about all licensees is available.

Section 21(j)(2) provides:

Ms. Mary Ann Courter  
August 15, 1989  
Page 4

Before the department may release the information described in Subdivision (1) of this subsection, the purchaser must agree to delete the name, address, and date of birth of any person whose name is also included on the mail or telephone preference list maintained by a recognized trade association which is used to remove the name of any individual who has requested that the individual's name not be made available for solicitation purposes.

You argue that to comply with a request for information about all licensees without reference to section 21(j)(2) would nullify that subsection. Subsection (j)(2) authorizes the release of the names, addresses, and dates of birth of all licensees only after the requestor has agreed to delete information about persons that may be included on certain mail or telephone preference lists. The department may require that Mr. McCully comply with section 21(j)(2).

This is a different issue, however, than that raised by the request for driving records. Access to driving records is governed by section 21(e). Access to information about lists of all licensees is governed by section 21(j). Subsection (2) of section 21(j) does not apply to section 21(e).

You also suggest that the department be permitted to comply with the request for the driving record histories by first providing the requestor with a copy of a magnetic tape containing the information described in section 21(j)(1). Once the requestor identified specific licensees about whom he seeks driving record information, you state that the department will then release the driving histories pursuant to section 21(e).

Section 21(j)(1) does not specify a cost for magnetic tape copies of driver's licensees information. Section 9 of the Open Records Act expressly provides that charges for copies of information stored on computer record banks, microfilm records, or other similar record keeping systems match the "actual cost" of providing the records. See V.T.C.S. art. 6252-17a, § 9(a), (b). You must release the requested information. The manner and method of release

Ms. Mary Ann Courter  
August 15, 1989  
Page 5

should comply with article 6687b, section 21(j)(2), (j)(1), and (e), respectively.

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 OR89-251.

Yours very truly,  
*Open Government Section*  
*of the Opinion Committee*

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

JSR/FAF/mc

Ref.: ID# 6437  
ID# 6540

cc: Timothy R. McCully  
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