



THE ATTORNEY GENERAL
OF TEXAS

August 17, 1989

JIM MATTOX
ATTORNEY GENERAL

Mr. Caydon Brush
Chief of Police
Hereford Police Department
P. O. Box 512
Hereford, Texas 79045

Dear Mr. Brush:

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# 4685 and set up as formal file RQ-1616. Because our research reveals that existing decisions govern your request, we are closing the file on RQ-1616 and issuing this information letter ruling. This decision is OR89-261.

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.

As Chief of the Hereford Police Department, you ask whether you may reveal individuals' criminal records to prospective employers seeking criminal record checks on applicants. Your request letter states that

[t]hese organizations are private businesses and not criminal justice agencies. These requests usually come through the mail accompanied by a waiver signed by the applicant who is seeking employment.

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 guidelines on what information contained in police files is public. The Personal History and Arrest Report, which consists of the

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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, a compilation of arrests for particular names, which often contains 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). Consequently, criminal history information is not public as a general rule. Cf. Open Records Decision No. 144 (1976).

Individuals may, however, gain access to their own criminal history and arrest records. Attorney General Opinion MW-95 (1979). This right, however, is not governed by the Texas Open Records Act, which does not as a general rule create special rights of access separate from the general rights of the public. V.T.C.S. art. 6252-17a, § 14(a). The Code of Federal Regulations requires criminal justice agencies that utilize the services of Department of Justice criminal history record information systems to establish procedures for any individual to gain access to and review his criminal history record information for completeness and accuracy, provided that the individual pay any required processing fee and verify his identity by fingerprint comparison. See 28 C.F.R. § 20.34(a).

In Attorney General Opinion MW-95, this office held (1) that upon satisfactory verification of the requestor's identity, law enforcement agencies must allow individuals to have access to their own criminal history records, and (2) that when necessary to challenge or correct the records, agencies must furnish individuals a copy of their criminal history records. That opinion also states that "a law enforcement official such as the sheriff may permit an individual to exercise his right of access to criminal history information about him for purposes of challenging or correcting that information through an agent such as his attorney . . ." (Emphasis added.)

The circumstances you describe differ significantly from those requisite for the release of criminal history records under the federal regulations. These records are not being sought for purposes of checking their accuracy, nor does an agency relationship ordinarily exist between a job applicant and the organization with whom he is seeking employment. Accordingly, the Hereford Police Department may not release to prospective employers Criminal History Record

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Information the department holds that contains a compilation of arrest and conviction data, such as records obtained from the National Crime Information Center. Access to this information must be obtained by the affected individual pursuant to the procedures set forth in the Code of Federal Regulations.

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 OR89-261.

Yours very truly,

Open Government Section
of the Opinion Committee

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Approved by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/bc

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