



**THE ATTORNEY GENERAL
OF TEXAS**

August 31, 1989

**JIM MATTOX
ATTORNEY GENERAL**

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# 6295; this decision is OR89-280.

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 (the department) received a request for access to paper documents and physical evidence maintained by the department, including drivers' license information and physical objects from a criminal investigation. You contend that many of the documents requested have been either released to the requestor, or are not in the department's possession. You also ask that the department be permitted to release the drivers' license information pursuant to the procedures outlined in article 6687b, V.T.C.S.

You claim that the department does not possess some of the information the requestor seeks, such as policies and procedures concerning inspection of public documents and/or physical evidence. The Open Records Act does not require that governmental bodies create or prepare new information, Open Records Decision No. 342 (1982), nor does it require that a governmental body obtain information that is not in its possession. Open Records Decision Nos. 445 (1986); 317 (1982). If the department does not possess such policies

Ms. Mary Ann Courter
August 31, 1989
Page 2

and procedures, the act does not require that the department create this new information.

You state that some of the information the requestor seeks are physical objects from an investigation stored in the department's crime laboratory. For example, the requestor asks to inspect a paper clip with five keys attached to it. You contend that access to this evidence is not contemplated by the act. In Open Records Decision No. 432 (1985), the attorney general indicated that photographic negatives fall within the act. Sketches and drawings may also fall within the act. See, e.g., Open Records Decision No. 413 (1984). However, tangible objects, such as fibers, debris, weapons, etc., are not covered by the act. See V.T.C.S. art. 6252-17a, § 2(2). The act applies to information, not objects.

Finally, you ask that the department be permitted to release drivers' license information pursuant to the procedures outlined in article 6687b, sections 21(d) and (e). This office has recently addressed the manner through which the Texas Department of Public Safety may release drivers' license information pursuant to a written request. Enclosed is a copy of informal open records decision OR89-251, which governs this issue.

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 OR89-280.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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of the Opinion Committee
Approved by David A. Newton
Assistant Attorney General

DAN/FAF/bc

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ID# 6445

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Enclosure: OR89-251