



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

September 11, 1990

Ms. Mary Ann Courter  
Assistant General Counsel  
Texas Department of Public Safety  
Box 4087  
Austin, Texas 78773-0001

OR90-440

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# 10264.

You inform us that an attorney representing certain individuals in criminal proceedings in Pecos County submitted a request to the county attorney for the results of breath intoxilyzer tests performed upon his clients. He submitted his request in the form of a motion for discovery pursuant to section 3(e) of article 6701~~1~~-5, V.T.C.S. That subsection provides that upon the request of a person who has given a specimen at the request of a peace officer, the results of the test of the specimen shall be made available to that person or his attorney. The motion for discovery was denied by the county court judge presiding over the matter. You indicate that the criminal proceedings are still pending.

Subsequent to the court's denial of the motion for discovery, you received a request under the Open Records Act for copies of the results of those tests that are in your custody. You assert that the test results are excepted under section 3(a)(3) of the Open Records Act, the litigation exception.

We have considered the exception you claimed, specifically 3(a)(3), and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 551 (1990), a copy of which is enclosed, resolves your request. For this reason, you may withhold the requested information while the litigation is pending.

We note that section 3(e) of the act provides:

For purposes of Subsection (a)(3) of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

See Open Records Decision No. 433 (1986).

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 OR90-440.

Yours very truly, -



Jim Moellinger  
Assistant Attorney General  
Opinion Committee

JM/le

Ref.: ID# 10264, 10370

Enclosure: Open Records Decision Nos. 551, 433

cc: Mr. Steven L. Woolard  
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