



THE ATTORNEY GENERAL
OF TEXAS

September 18, 1990

JIM MATTOX
ATTORNEY GENERAL

Mr. William J. Delmore, III
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002

OR90-442

Dear Mr. Delmore:

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 earlier request was assigned RQ-2080 (ID# 10107); your most recent correspondence has been assigned ID# 10423.

The Harris County District Attorney has received a request for copies of the following information concerning two court cases:

- the transcript and statement of facts
- crime scene reports
- arrest reports
- showup/lineup sheets
- names and addresses of each witness that testified for the state
- statements made by two co-arrestees

By your letter of August 14, 1990, you advised that the office of the Harris County District Attorney no longer possesses the transcript and statement of facts because these materials are retained by the district court clerk and the clerk of the appellate court and checked out to the parties to the litigation for preparation of their briefs and then returned to the clerk.

The physical location of information is not necessarily dispositive of whether the information is covered by the Open Records Act. See Open Records Decision No. 462 (1987).

The test for whether the Open Records Act applies to information actually held by another entity is whether: 1.) the information relates to the governmental body's official duties or business; 2.) the entity acts as an agent of the governmental body in collecting the information; and 3.) the governmental body has or is entitled to access to the information. Id. See also Open Records Decision Nos. 445; 437 (1986).

In this case, the second requirement is not met. The clerks of the district and appellate courts are not required to keep the transcript and statement of facts by some authority or approval of the Harris County District Attorney's office. See Gov't Code sections 51.303; 51.204. It can not be said that the clerks are the agents of the Harris County District Attorney's office. Consequently, the transcript and statement of facts collected and maintained by the court clerks are not covered by the Open Records Act. See Open Records Decision No. 492 (1988).

You raise exceptions 3(a)(3) and 3(a)(8) to the Open Records Act to the required disclosure of the remaining information in the request. With regard to section 3(a)(8), the availability of arrest-related law enforcement information has been summarized in Open Records Decision No. 127 (1976) (copy enclosed). Based on that decision, you may withhold the names and addresses of witnesses and statements of co-arrestees. Please refer to the enclosed copy of Open Records Decision No. 127 to determine what information on the offense report, which was referred to as the "crime scene report", the arrest report, and the show up sheet you may release. We need not address you claims based on section 3(a)(3) as we have settled this request based on section 3(a)(8).

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 any questions about this ruling, please refer to OR90-442.

Yours very truly,


Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref: RQ-2080 (ID# 10107), ID# 10423

Enclosures: ORD-492, ORD-127

cc: Eric Victor Esteves
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