



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

November 12, 1990

Mr. J. Kirk Brown  
General Counsel  
Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, Texas 77342-0099

OR90-536

Dear Mr. Brown:

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# 9016.

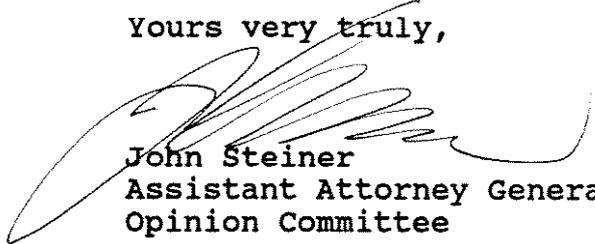
We have considered the exceptions you claimed, specifically, sections 3(a)(1) and 3(a)(8) and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 565, a copy of which is enclosed, resolves your request. As indicated in Open Records Decision No. 565, criminal history information obtained from the NCIC is confidential and may not be released. Subjects of such reports may obtain information regarding access to the reports from the FBI pursuant to federal regulations. However, criminal history information generated by the state of Texas or its subdivisions is available to the subject thereof pursuant to section 3B of the Open Records Act unless there is a law, other than one designed to protect the privacy of the individual requesting the information, which permits withholding the information. Section 3(a)(8) of the Open Records Act could, if properly asserted, provide a basis for withholding such information. However, you have not explained how the release of the requested information will "unduly interfere with law enforcement." You advise that you "have no way of evaluating this material without contacting the convicting county." Under the Open Records Act, all information held by governmental bodies is open unless it falls within one of the act's specific exception to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). In some instances, if you wish to assert section 3(a)(8), it may be necessary to

contact the convicting county in order to explain how the exception applies.

Accordingly, you must withhold the information obtained from the NCIC. You must release the balance of the requested information unless you are prevented from doing so by the Ruiz Stipulated Modification. See Open Records Decision No. 560. As noted in Open Records Decision No. 560, if you believe information is "sensitive" within the meaning of the Stipulated Modification, the proper authority to determine access to such information is the forum court.

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 OR90-536.

Yours very truly,



John Steiner  
Assistant Attorney General  
Opinion Committee

JS/le

Ref.: ID# 9016

Enclosure: Open Records Decision No. 565

cc: Lorraine Adams  
The Dallas Morning News  
Communications Center  
Dallas, Texas 75265