



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 4, 1991

Ms. Elaine H. Piper
Assistant City Attorney
Police Legal Advisor
2 Civic Center Plaza
El Paso, Texas 79999

OR91-540

Dear Ms. Piper:

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# 13969.

You have received a request for information relating to burglaries or thefts reported by a specific individual. In addition, the request seeks information relating to closed cases in which the named individual was involved as either a suspect or actor. You advise us that your department is not in possession of any records relating to burglaries or thefts reported by the named individual. Open Records Decision No. 362 (1983) held that the Open Records Act does not require a governmental body to make available information which does not exist. You decline to inform us, however, whether your department possesses information relating to closed cases in which the named individual was involved as a suspect or actor. You claim that if such information does exist, it is excepted from required public disclosure by sections 3(a)(1) and 3(a)(8).

You assert that release of the requested information is governed by federal law, and you refer us to Open Records Letter 446 (1991) in which this office determined the availability of similar information. Title 28, section 20.3(b) of the

Code of Federal Regulations, governs the release of criminal history record information (CHRI), which is defined as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions . . . or other formal charges . . ." 28 C.F.R. § 20.3(B). A criminal justice agency that reveals CHRI in an unauthorized manner is subject to a fine of up to \$10,000, as well as a cut-off of federal funds. 28 C.F.R. § 20.25; *see also* Open Records Decision No. 342 (1982) at 3. Title 28, section 20.20(b) of the Code of Federal Regulations provides:

The regulations in this subpart shall not apply to criminal history record information contained in:

....

(2) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long standing custom to be made public, *if such records are organized on a chronological basis.* (Emphasis added.)

Any search and compilation of CHRI that is based on an individual's name and not on the original chronology of the offence and incident reports would constitute an improper release of CHRI as specified in the federal regulations. Accordingly, arrestees' records that have been identified solely in this manner must be withheld pursuant to section 3(a)(1). *See* Open Records Decision No. 476 (1987) (federal regulation adopted pursuant to statutory authority provides statutory confidentiality for purposes of section 3(a)(1)).

Having examined the request for information, it is clear that the requestor seeks unspecified arrest information which would necessitate search and compilation of CHRI on the basis of an individual's name. Accordingly, if the information does exist, it must be withheld from required public disclosure under section 3(a)(1). As we resolve this issue under section 3(a)(1), we need not address the applicability of section 3(a)(8) at this time.

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 OR91-540.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/GK/lcd

Ref.: ID# 13969

cc: Mr. Marshall E. Ward
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