



Office of the Attorney General  
State of Texas

April 30, 1993

DAN MORALES  
ATTORNEY GENERAL

Mr. Hugh W. Davis  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton  
Fort Worth, Texas 76102

OR93-219

Dear Mr. Davis:

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# 19208.

An applicant rejected for employment with the Fort Worth Police Department seeks information relating to his application for employment. Specifically, the requestor seeks three categories of information:

Copies of all returned questionnaires relating to character references including those from professional, and personal acquaintance.

Copies of any and all background investigative notes, summaries, conclusions and/or reports.

Any document(s) containing or otherwise accurately depicting the . . . "problem area" which were considered as a basis for rejection.

You object to release of the requested information and claim that it is excepted from required public disclosure by section 3(a)(8) of the Open Records Act.

Section 3(a)(8) of the Open Records Act excepts the following from required public disclosure:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Traditionally, our office has distinguished between cases that are still under active investigation and closed cases when applying section 3(a)(8). In cases that are still under active investigation, this section excepts from disclosure all information except that generally found on the first page of the offense report. In closed cases, however, the governmental body must demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 3(a)(8). Open Records Decision No. 216 (1978) at 4.

You do not indicate that the requested information relates to an ongoing law enforcement investigation or prosecution. You claim, however, that release of the requested information will unduly interfere with law enforcement because it will "jeopardize the integrity of the background investigation process." You do not explain, however, nor is it apparent from the documents submitted to us for review, why release of the requested documents would have such an effect. We conclude, therefore, that you have not demonstrated that release of the requested information would unduly interfere with law enforcement. Accordingly, the requested information may not be withheld from required public disclosure under section 3(a)(8) of the Open Records Act.

While a governmental body fails to indicate an applicable exception, the information is presumed to be open. Open Records Decision Nos. 321, 325 (1982). However, the Attorney General will raise section 3(a)(1) on behalf of a governmental body. Open Records Decision No. 481 (1987). Section 3(a)(1) of the Open Records Act, which excepts "information made confidential by law, either Constitutional, statutory, or by judicial decision." Some of the information submitted to us for review appears to be criminal history record information ("CHRI") obtained from the federal government. Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* The CHRI you have submitted appears to have been generated by the National Crime Information Center ("NCIC") Interstate Identification Index ("III"). Persons who are subjects of NCIC III records may obtain such information only in accordance with federal regulations. Accordingly, you may withhold the requested CHRI only to the extent that it was provided to you through the NCIC III system.<sup>1</sup> The remaining information, however, must be released in its entirety.<sup>2</sup>

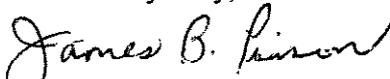
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<sup>1</sup>Other decisions of this office have suggested that criminal history information may implicate privacy interests. See Open Records Decision No. 565 (1990); 216 (1978); see also *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 188 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Section 3B of the Open Records Act, however, provides for a special right of access to information otherwise protected by privacy interests. It states, in pertinent part:

A person or the authorized representative of a person has, beyond the right of the general public, a special right of access to copies of any records held by a governmental body that contain information relating to the person that is

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 OR93-219.

Yours very truly,



James B. Pinson  
Assistant Attorney General  
Opinion Committee

JBP/GCK/le

Enclosures: Marked Documents

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protected from public disclosure by laws intended to protect that person's privacy interests.

V.T.C.S. art. 6252-17a, § 3B(a). Because the information implicating privacy interests relates only to the requestor, the requested information may not be withheld from required public disclosure under section 3(a)(1) of the Open Records Act in conjunction with privacy doctrine.

<sup>2</sup>Some of the requested information implicates section 19A of the Polygraph Examiner's Act, article 4413(29cc), which provides in part:

(b) Except as provided in Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

(1) the examinee or any other person specifically designated in writing by the examinee.

(d) A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

V.T.C.S. art. 4413 (29cc), § 19A(b), (c)(1), (d). We understand that the polygraph information at issue here relates to examinations conducted for the city. While not requiring disclosure in this instance, article 4413(29cc) expressly permits the department to release the information in question to the examinee or his representative. *Id.* §§ 19A(b) - (c)(1), (d). Thus, with respect to this requestor, "no part of the polygraph examination[s] may be said to be 'deemed confidential by law' as required for exception from public disclosure under section 3(a)(1)." Open Records Decision No. 565 (1990) at 8 (copy enclosed).

Open Records Decision No. 565

Ref.: ID# 19208

cc: Mr. John M. Barnes  
951 Turner # 1328  
Grapevine, Texas 76051  
(w/o enclosures)