



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 23, 1993

Mr. William J. Delmore, III  
General Counsel  
Office of the District Attorney  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR93-278

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 request was assigned ID# 19397.

The Harris County District Attorney's Office (the "district attorney") has received a request for access to the district attorney's file concerning Mr. Joe Nathan Harris, who was recently convicted for the offense of burglary of a habitation. You advise us that you will make available to the requestor the pleadings and instruments filed in the 184th District Court. You have submitted to us for review the remaining information contained in the requested file and object to its release under sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim that the requested information is excepted by section 3(a)(1) because it constitutes work product and is subject to the "law enforcement privilege" set forth in *Hobson v. Moore*, 734 S.W.2d 340 (Tex. 1987). This argument was also rejected in Open Records Letter OR93-213 (1993). As we stated in that ruling, section 3(a)(1) does not encompass work product or discovery privileges. *See also* Open Records Decision No. 575 (1990). Such protection may exist under section 3(a)(3), if the situation meets the section 3(a)(3) requirements.<sup>1</sup> You advise us that Mr. Harris was convicted on January 14, 1993, and has to date given no notice of appeal, nor has he filed any application for habeas corpus relief. You do not indicate that litigation in this matter is pending or reasonably anticipated. We thus have no basis on which to conclude that the requested information may be withheld

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<sup>1</sup>Please note that section 14(f) of the act, added by the 71st Legislature in 1989, chapter 1248, section 18 provides in part that "exceptions from disclosure under this Act do not create new privileges from discovery." Accordingly, the *Hobson* court's apparent use of section 3(a)(8) as a basis for the "law enforcement privilege" is no longer valid.

from required public disclosure under either the work product doctrine or section 3(a)(3) of the Open Records Act. See Open Records Decision Nos. 551 (1990) (section 3(a)(3) applies to information relating to pending or reasonably anticipated litigation); 518 (1988) (section 3(e) does not relieve governmental body from demonstrating general applicability of section 3(a)(3)).<sup>2</sup>

With respect to section 3(a)(8), you argue that this exception should apply to all material in a closed law enforcement file. You also dispute our use of a standard that permits you to withhold from a closed file only that information the release of which would "unduly interfere with law enforcement." In Open Records Letter OR93-213, we reviewed the same argument and rejected it. Accordingly, we will apply the existing standard of undue interference with law enforcement. Since you do not claim that any undue interference with law enforcement will be caused by releasing the requested information, you have waived this argument. Accordingly, except as noted above, the requested information may not be withheld from required public disclosure under section 3(a)(8) of the Open Records Act and must be released in its entirety.

Because 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 contact this office.

Yours very truly,



Rick Gilpin  
Assistant Attorney General  
Opinion Committee

RG/GCK/le

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<sup>2</sup>The information submitted to us for review includes information generated by the National Crime Information Center ("NCIC"), the Texas Crime Information Center ("TCIC") files, and certain locally compiled criminal history record information ("CHRI"). Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* We conclude, therefore, that if the CHRI data was generated by the federal government or another state, it may not be made available to the public by the district attorney. See Open Records Decision No. 565. CHRI information generated within the state of Texas and TCIC files must be withheld from required public disclosure under section 3(a)(1) in conjunction with common law privacy doctrine. See Open Records Decision Nos. 565; 216 (1978); *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public).

Ref.: ID# 19397

Enclosures: submitted documents

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(w/o enclosures)