



Office of the Attorney General
State of Texas

June 15, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Bruce W. Cobb
Assistant City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR93-321

Dear Mr. Cobb:

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# 19480.

The City of Galveston (the "city") has received a request for several categories of information relating to ten specified persons. Specifically, the requestor seeks a background records check; criminal history check; civil court records check; traffic violations records check; education records check; voters registration check; and any additional information in the city's possession regarding the ten named individuals. You advise us that the city is not in possession of the requested civil court records, education records, or voter registration records, and that a traffic violations check has uncovered no records responsive to the request. The Open Records Act does not require a governmental body to make available information that it does not possess, *see, e.g.*, Open Records Decision Nos. 558 (1990); 518 (1989); 499 (1988), to obtain information from another entity, so long as the entity does not hold the information on behalf of the governmental body, Open Records Decision No. 534 (1989), or to release records that do not exist, Open Records Decision No. 362 (1983).

In addition, you claim that you require clarification as to what the requestor means by "background records check" and that you require additional information from the requestor, *i.e.*, the subjects' birthdates or social security numbers, in order to retrieve some of the requested information. Under the Open Records Act, it is the governmental body's duty to make a good faith effort to determine what documents in its custody are responsive to the request. Open Records Decision No. 561 (1990) at 8. When a governmental body is presented with an unclear request for information rather than for specific records, the governmental body should advise the requestor of the types of information available so that he may narrow his request. *Id.* at 9; *see also* Open Records

Decision No. 563 (1990). As you do not comment on the request for additional information regarding the ten individuals, we assume that such information has been or will be made available to the requestor. *See* Open Records Decision No. 363 (1983).

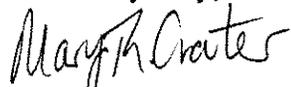
We understand that you have located National Crime Information Center ("NCIC") and Texas Crime Information Center ("TCIC") files, municipal court records, personnel records, police arrest reports, and daily blotter information that you believe is responsive to the request. However, you have not submitted this information to us for review. You claim that the NCIC and TCIC files may be withheld pursuant to federal regulations and prior rulings of this office. Section 3(a)(1) of the Open Records Act makes confidential "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Title 28, part 20 of the Code of Federal Regulations governs the release of criminal history record information ("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 city. *See* Open Records Decision No. 565. In addition, 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).

Finally, we address the remaining information you have located that is responsive to the request. You have advanced no arguments claiming that this information is excepted from required public disclosure under the Open Records Act, nor have you submitted any such information to this office for review. You are responsible for submitting in writing the reasons you believe the requested information is excepted from disclosure. Under the Open Records Act, all information held by governmental bodies is open to the public unless it is within a specific exception to disclosure. The custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental body does not claim an exception or fails to show how it applies to the records, it will ordinarily waive the exception unless the information is deemed confidential by the act. *See* Attorney General Opinion JM-672 (1987). Accordingly, we conclude that the remaining information must be released unless it is made confidential by law.

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 ID# 19480.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GCK/jmn

Ref: ID# 19480
ID# 19519
ID# 19952

cc: Mr. Herbert Feist El
TDCJ #318012
Bee County
3001 South Emily Drive
Beeville, Texas 78102