



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 13, 1993

Mr. David B. Casas
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR93-554

Dear Mr. Casas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ Your request was assigned ID# 19575.

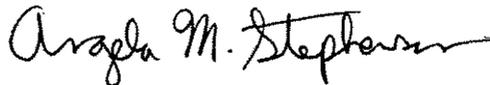
The City of San Antonio (the "city") has received a request for several categories of information relating to ten specified persons. Specifically, the requestor seeks a background records check; criminal history records check; civil court records check; traffic records check; education records check; voter's registration check; and any additional information in the city's possession regarding the ten named individuals. You advise us that the requested traffic records, if any exist, will be made available to the requestor. You also advise us, however, that the city is not in possession of the requested background records, civil court records, education records, or voter registration records. 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).

¹We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

We understand that you have located National Crime Information Center ("NCIC") and Texas Crime Information Center ("TCIC") files that you believe are responsive to the request.² You claim that the NCIC and TCIC files may be withheld from disclosure pursuant to section 552.101 of the act, which excepts "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 that states obtain from the federal government or other states. Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to criminal history record information the state itself generates. *Id.* at 11-12. We conclude, therefore, that if the criminal history data was generated by the federal government or another state, it may not be made available to the public by the city. In addition, criminal history record information generated within the state of Texas and TCIC files must be withheld from required public disclosure under section 552.101 in conjunction with common-law privacy doctrine. *See* Open Records Decision Nos. 565; 216 (1978); *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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 contact this office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Open Government Section

AMS/rho

Ref.: ID# 19575

²You contend that because the requestor has not provided you with any information concerning the ten individuals other than their names, you cannot determine whether the records you have located are indeed responsive to the request. You state further that it is your "opinion that the requestor has not sufficiently identified the record which he seeks and that the City of San Antonio is under no obligation to respond other than to notify the requestor that further identifying information is required before his request may be considered." 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) at 7.

Enclosures: Documents submitted

cc: Mr. Herbert Feist El
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(w/o enclosures)