



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 24, 1994

Mr. Arthur C. Butler  
Chief Deputy  
Henderson County  
Sheriff's Office  
Athens, Texas 75751

OR94-485

Dear Mr. Butler:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code (former V.T.C.S. art. 6252-17a<sup>1</sup>). You appear to assert that the requested information is excepted from required public disclosure as a confidential "criminal history record" under section 552.101 of the Government Code (former section 3(a)(1) of article 6252-17a, V.T.C.S.), in conjunction with article 60.03 of the Code of Criminal Procedure. Your request was assigned ID# 21778.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 (former section 7(a)) to submit that request to the attorney general within 10 days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

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<sup>1</sup>We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. 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 realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. Upon receipt of your request for a decision, this office sent you an acknowledgment card which asked you to submit for our review copies of the records at issue and your arguments for withholding those records from the requestor. To date we have not received your reply.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate your request. Consequently, we find that you have not met your burden under sections 552.301 - .303 of the code and that the requested information is presumed to be public.

As noted above, the presumption of openness is overcome where information is deemed confidential by law. *See also* Gov't Code § 552.352 (former V.T.C.S. art. 6252-17a, §10(a), (f)) (the distribution of confidential information is a criminal offense). Article 60.03(c) of the Code of Criminal Procedure provides:

Neither a criminal justice agency nor the [Criminal Justice Policy Council] may disclose to the public information in an individual's criminal history record *if the record is protected by state or federal law or regulation.* [Emphasis added.]

Some of the records that the requestor seeks may constitute criminal history information obtained from the National Crime Information Center ("NCIC"). If the requestor wishes to obtain a copy of his own NCIC records, he must apply directly to the U.S. Department of Justice. *See* 28 C.F.R. § 20.34. Also, although this office has previously held that local law enforcement agencies normally must release criminal history information from the Texas Crime Information Center ("TCIC") to individuals to whom that information relates, *see* Open Records Decision No. 565 (1990) at 12, this office is currently re-examining that practice in light of newly enacted provisions in subchapter F of chapter 411 of the Government Code. Consequently, the sheriff may withhold at this time all TCIC information coming within the ambit of the pending request until this office resolves this issue.<sup>2</sup>

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<sup>2</sup>However, because "driving record information" is specifically excluded from the provisions of subchapter F, *see* Gov. Code § 411.082(2)(B), the sheriff must release this information to the requestor.

In the absence of a demonstration that the remaining information coming within the ambit of the request is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352. If you have any questions regarding this matter, please contact our office.

Yours very truly,

  
Rebecca L. Payne  
Section Chief  
Open Government Section

RLP/RWP/sbm

Ref.: ID# 21778

cc: Mr. David Hutchins  
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