



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

November 30, 1990

Honorable Robert T. Jarvis
Grayson County Attorney
Grayson County Justice Center
Sherman, Texas 75090

LO-90-103

Dear Mr. Jarvis:

Your questions are in reference to an Open Records Request received by your office. The request sought access to your file in regard to a prosecution for criminally negligent homicide, case no. 90-F0189.

You advise that you have no objection to the release of the requested information. You ask whether you may release the file in light of section 3(a)(8) of the Open Records Act, V.T.C.S. art. 5262-17a.

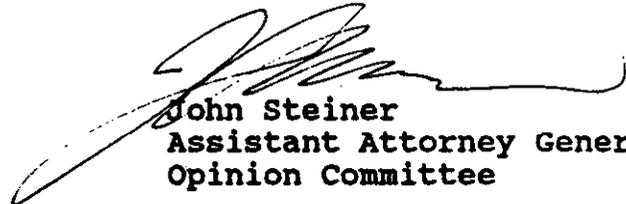
Section 14(a) of the Open Records Act provides that a governmental body may make part or all of its records available to the public unless expressly prohibited by law, provided that such records are then made available to any person. Accordingly, the assertion of section 3(a)(8) as an exception to public disclosure is discretionary, and may be waived.

By its terms, section 14(a) does not apply to information made confidential by law. As you have not submitted the requested information for review, we cannot determine whether the file contains any such information. However, we note that compilations of criminal history information, for example "rap sheets" or NCIC and TCIC printouts are confidential. Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 117 (Tex. Civ. App. - Houston [14th Dist.] writ ref'd n.r.e. per curiam 1975), 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 565 (1990). Information is confidential under common-law privacy if it (1) contains highly intimate or embarrassing facts about a person's private affairs, the release of which would be highly objectionable to a person of ordinary sensibilities, and (2) is of no legitimate concern to the public. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). However, the right of privacy terminates upon death. Open Records Decision No. 432 (1985).

Generally speaking, the functions of governmental body determine whether it is within the judicial exception. The district attorney is a "governmental body" for purposes of the Open Records Act. Attorney General Opinion JM-266 (1984).

Finally, section 6 of the Open Records Act is illustrative, and does not limit the applicability of the exceptions enumerated in section 3. Open Records Decision No. 551 (1990). For your convenience, we are enclosing a copy of our Handbook on the Open Records Act as well as the opinions cited herein.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

JS/SW/le

Ref: ID# 10151 (RQ-2075); 10546

Enclosures: Open Records Act Handbook
Open Records Decision Nos. 565, 551, 432
Attorney General Opinion JM-266