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October 5, 1990

The Honorable Jim Mattox  
Attorney General of Texas  
Open Government Section  
Supreme Court Building  
Austin, Texas

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Opinion Committee

RE: Open Records Request

Dear General Mattox:

Pursuant to Section 7 of the Texas Open Records Act, article 6252-17a, V.T.C.S., the Texas Department of Public Safety requests a decision as to whether certain information is exempt from public disclosure under sections 3(a)(1) and 3(a)(1) of the Act.

Attached as exhibit A is a copy of a letter received from the Dallas Observer, asking for information related to the Drug Recognition Evaluation Program. Attached as exhibit B are representative samples of the Drug Influence and Evaluation Reports. Attached as exhibit C is a copy of a "rolling" log. This is the only document we have with regard to laboratory results from the blood and urine samples taken from the subjects tested. DPS has no documents concerning the information asked for under number 3 of the requestor's letter.

There are no criminal charges pending concerning the arrests and reports at issue. The Department is concerned, however, that the privacy rights of the individuals tested would be violated by public release of the information contained in the reports. Information contained in the reports include blood pressure, temperature, descriptions of nasal areas and oral cavities, and injection marks on the arms. The Department asks whether release of this information to the public without the consent of the subject, would involve the release of confidential information.

The narrative section of the report includes the evaluator's opinion as to whether the subject was under the influence of a particular substance. As can be seen in the rolling log, the DRE findings did not always match the lab findings. The purpose of the program is to train peace officers to recognize symptoms of controlled substances and give them experience in evaluating drug use in persons they

arrest. These reports were obtained pursuant to a training program supervised by the Texas Commission on Law Enforcement Officer's Standards and Education (TCLEOSE). The Department submits that this may be characterized as advice, opinion, and recommendation, and so exempt under section 3(a)(11). Therefore, the Department asks whether the DRE findings in the rolling log and the narrative evaluation contained in the reports may be withheld from public disclosure.

Attached as exhibit D are two newspaper articles concerning the training engaged in this past summer.

The Department asks for a decision as to whether any of the information which is subject to the request is exempt from disclosure under sections 3(a)(1) and 3(a)(11) of the Act. Please feel free to contact me if you have any questions or need any additional information.

Sincerely,



Mary Ann Courter  
Assistant General Counsel

MAC:bif

Attached