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ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

June 17, 1985

OPINION NO. 85-134

Col. T.L. Goodwin
Arkansas State Police
#3 Natural Resources Drive
P.O. Box 5901
Little Rock, AR 72215

Dear Col. Goodwin:

This letter is written in response to your request for an Attorney General's opinion regarding the public access to a manual that was prepared by the Arkansas State Police. The stated purpose of the manual was to better inform law enforcement officers of the activity of extremist groups.

Act 93 of 1967, compiled at Ark. Stat. Ann. §12-2801 (Repl. 1979 and 1983 Cumm. Supp.), better known as the "Freedom of Information Act," grants the citizens of this State the right to have access to public records.

It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy. Towards this end, this Act [12-2801 - 12-2807] is adopted, making possible for them or their representatives, to learn and to report fully the activities of their public officials.

Ark. Stat. Ann. §12-2802.

All records that are "public records" must be made available to the public. A public record includes all "writings, recorded sounds, films, tapes, or data compilation in any form (a) required by law to be kept, or otherwise kept in which constitute a record of the performance or lack of performance of official functions which are or should be

carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds." There are certain documents or classes of documents that are specifically excluded from the provisions of the Freedom of Information Act. These exceptions can be found in Ark. Stat. Ann. §12-2803 and §12-2804.

At least two of the statutory exceptions appear to apply to the manual to which you have referred. The first exception is for information that would, if released, constitute a clearly unwarranted invasion of personal privacy. If the information falls in this category, it is not considered a public record, as defined in the Freedom of Information Act. I must point out that Act 468 of 1985, which goes into effect June 28, 1985, eliminated this exception to the Freedom of Information Act. However, until June 28, 1985, information that falls into this category does not have to be released to the public.

The second exception that appears to apply to this situation is referred to in Ark. Stat. Ann. §12-2804 which states, inter alia:

it is the specific intent of this section that. .
. undisclosed investigations by law enforcement
agencies of suspected criminal activity. . shall
not be deemed to be made open to the public under
the provisions of this act.

Thus, public documents that are a part of an on going investigation are not subject to the Freedom of Information Act. Whether or not the records in question fall within one of the exceptions of the Freedom of Information Act, is a question for the custodian of the records to determine. If a citizen feels that he has been improperly denied access to the records, he may petition the circuit court of this State who must hear the case within seven(7) days.

In summation, you may deny the public access to this manual if it falls within one of the exceptions that I have just outlined. Whether the manual falls within one of the exceptions is a question for you, as custodian of the records, to determine.

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The foregoing opinion, which I hereby approve, was
prepared by Assistant Attorney General Randel K. Miller.

Sincerely,



STEVE CLARK
Attorney General

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