



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 4, 1989

Edward H. Perry
Office of the City Hall
City Hall
Dallas, Texas 75201

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5042; this decision is OR89-002

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

Mr. George Rodrique, the Day City Editor of the Dallas Morning News, requested to inspect all existing reports of internal affairs investigations conducted by the Dallas Police Department "upon completion." This request is for the same type of information previously requested from your office by the Dallas Times Herald. You state that you intend to comply with Mr. Rodrique's request to the extent that these documents contain public information as discussed in open records ruling OR88-064, which addressed the Times Herald's request.

Contrary to Mr. Rodrique's assertions, OR88-064 held, inter alia, that section 3(a)(8) of the Open Records Act protects from required public disclosure information tending to identify witnesses who could be subject to harassment or intimidation, and confidential police techniques. You may, therefore, continue to withhold these types of information

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using OR88-064 as a guideline when complying with the current request.

This office also agrees that OR88-064 is not an exhaustive discussion of the types of information contained in reports of internal affairs investigations that may be withheld from the public. Section 3(a)(17) of the Open Records Act protects police officers' photographs, and section 3(a)(19) protects officers' home addresses and telephone numbers. Other information may be protected by statute, e.g., the results of polygraph tests. See Article 4413 (29cc), V.T.C.S. On the other hand, because you submitted the documents reviewed in OR88-064 as representative samples, you have waived any of the act's permissive exceptions not raised at the time you requested the decision with regard to internal affairs investigations.

Finally, because you are using OR88-064 as a guideline, you will need to request an attorney general opinion only if the requestor contests your withholding of information you believe is exempt from required public disclosure. In that event, you must submit copies of the deleted information to this office with your arguments as to which of the act's exceptions apply to the information and why that exception applies.

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 refer to OR89-002.

Yours very truly,

*Open Government Section
of the Opinion Committee* 

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/bra

Copy to: George Rodrique
Day City Editor
Dallas Morning News
Communications Center
Dallas, Texas 75265

Ref: ID# 5042
OR88-064