THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

January 9, 1989

Mr. Paul G. Stuckle
Police Legal Advisor
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

Dear Mr. Stuckle:

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# 5002; this decision is OR89-008.

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.

The City of Fort Worth received a request from Mr. Elliot Winfield, a prisoner in the Tarrant County jail, for "a copy of the police report, including date of arrest, time, officers, and arrest warrant" concerning his arrest. The City of Fort Worth released to Mr. Winfield the documents requested, but excised from the documents the names of the minor complainant and of possible witnesses in the case. You request a decision as to whether the city may withhold these names under sections 3(a)(1), 3(a)(3) and 3(a)(8) of the Open Records Act.

Section 3(a)(1) of the Open Records Act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision". The primary purpose of this exception, however, is to protect privacy

rights. The attorney general will generally raise the issue of privacy rights even if it was not raised by the governmental entity.

Texas courts recognize a category of common-law privacy protecting against "public disclosure of private facts." This common-law right of privacy will ordinarily exist in any information which contains highly intimate or embarrassing facts about a person, the disclosure of which would be "highly objectionable to a person of ordinary sensibilities", and, in addition, is of no legitimate concern to the public. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668, 678-81 (Tex. 1976) cert. denied 430 U.S. 931 (1977). The attorney general discussed this right of privacy in Open Records Decision No. 339 (1982), finding that the common-law right of privacy allows for the withholding of the names of victims of serious sexual crimes. In the case in question, the complainant is a victim of a serious sexual crime and is also a minor. His identity is protected by the common-law right of privacy and should not be released.

The identities of the other persons whose names were excised are protected under section 3(a)(8) of the Open Records Act. The controlling case with regard to the availability of arrest-related information is Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). In this case, the court stated that information that would identify and describe witnesses in arrest reports could be withheld from the public. Id. at 187. See Open Records Decision No. 127 (1976). The persons whose names were excised are potential witnesses to a criminal prosecution; thus, their names should be withheld.

We do not address your argument concerning section 3(a)(3) because the requested information may be withheld under sections 3(a)(1) and 3(a)(8). However, we enclose a recent ruling concerning the review by the attorney general of information deemed by the attorney of the governmental entity to fall within the 3(a)(3) exception.

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 OR89-008.

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/BLS/bra

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cc: Mr. Elliot Winfield

Enc: ORD-511