



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

February 9, 1989

Mr. Bill Strickland  
Sheriff  
McCulloch County, Texas  
Courthouse, Room 100  
Brady, Texas 76825

Dear Sheriff Strickland:

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# 5458; this decision is OR89-47.

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 McCulloch County Sheriff's Office received a request for a particular incident report concerning a family disturbance. You have raised none of the act's exceptions to required public disclosure, but state that you are concerned about the requestor's motives for requesting this information. Subsection 5(b) of the Open Records Act prohibits the custodian of records from asking why requestors seek information. Consequently, the requestor's motives are irrelevant when determining whether information is public. Attorney General Opinion MW-307 (1981); Open Records Decision No. 508 (1988).

As stated above, when a governmental body fails to raise an exception, this office may only determine whether the requested information is deemed confidential by law, as opposed to protected by all of the act's 22 different

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exceptions. Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common-law right to privacy. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied 430 U.S. 930 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. Id. at 683-85.

Because the reported incident did not result in a formal complaint or in the filing of criminal charges, this office believes that the narrative contained in the incident report meets the requirements listed above as coming within the protection of common-law privacy. You may in this instance, therefore, withhold the narrative portion of the report from public disclosure. The remaining information in the incident report must, however, be released. See Open Records Decision No. 127 (1976).

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. In the future, please enclose a copy of the letter from the requestor seeking information. If you have questions about this ruling, please refer to OR89-47.

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/bc

Ref: ID# 5458