THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

February 20, 1989

Mr. Lloyd Garza
City of San Antonio
P.O. Box 9066
San Antonio, Texas 78285

Dear Mr. Garza:

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# 5324; this decision is OR89-63.

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 San Antonio received several requests for a copy of a police dispatcher's communications with Officer Patricia Calderon in the form of an audiocassette tape or a written transcript. You state that no official written transcript exists, but some investigating officers have made notes from the tape. This office is interpreting the request as one for the tape, and not for the investigating officers' notations. You claim the information is exempt from disclosure pursuant to sections 3(a)(3) and 3(a)(8) of the act.

Section 3(a)(8) depends on whether release of the information would undermine a legitimate law enforcement or prosecution interest. Open Records Decision No. 434 (1986). Decision No. 434, however, added that "the act's provisions are to be liberally construed in favor of carrying out the policy of openness which underlies the act." Id. The tape

in question was made from the dispatcher's radio communications with the officer in the field. It is commonly known that dispatcher communications can be monitored by any person with a C. B. radio tuned to that frequency. You did not state, and this office will not presume, that the communications were made on an inaccessible frequency. In light of the fact that the communication was openly broadcast, it has already been essentially released to the public. If the communications were transmitted on an inaccessible frequency, please submit an affidavit explaining this within 5 days of receipt of this decision. If the broadcast was not "inaccessible," the tape must be released.

Regarding the request for a transcript of the tape, your argument is correct. The Open Records Act does not require a governmental body to create new information. Open Records Decision No. 342 (1982). You need not comply with the request for a transcript.

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. Please provide a copy of this decision to those requestors not listed below. If you have questions about this ruling, please refer to OR89-63.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee
Prepared by Patricia Barnhard
Assistant Attorney General

PB/bc

cc: Ms. Kathy Scott
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Ref.: ID# 5324