



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

March 20, 1989

Mr. Edward H. Perry  
Assistant City Attorney  
City of Dallas  
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# 5111; this decision is OR89-93.

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 Dallas Police Department received an open records request for the police investigative file on an unsolved murder that occurred in 1983. Although the Dallas police have arrested no one for this murder and are not pursuing the case on a day-to-day basis, the police consider this an open case because there is no statute of limitations for the crime of murder. You contend that subsections 3(a)(1), 3(a)(3), 3(a)(8), and 3(a)(11) of the Open Records Act protect this investigative report from required public disclosure.

We address first, however, the requestors' contention that the city of Dallas did not request a decision from this office in a timely manner. The Open Records Act states that

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if a governmental body wishes to withhold requested documents and there has been no previous determination that those documents are excepted from required public disclosure, the governmental body must within a reasonable time, but no later than ten days after receiving the request, seek an decision from the attorney general. The city of Dallas received the request for records on November 22, 1988 and requested a decision from this office on December 2, 1988, ten days after the day the city received the request. The city has, therefore, requested an attorney general decision in a timely manner.

The requestors, relatives of the deceased, also contend that they have a "right" to the investigative file. The Open Records Act prohibits selective disclosure. With two exceptions not applicable here, the Open Records Act grants no special rights of access to public records greater than the right held by the general public. See Attorney General Opinion MW-381 (1981). Open Records Decision Nos. 454 (1986); 288 (1981). Once a governmental body exercises its discretion to release certain information, it must ordinarily release it "to any person" who requests it. See section 14(a). If a governmental body releases information to one member of the public, the act's exceptions to disclosure are waived unless release of the information is prohibited by law. See article 6252-17a, section 14(a); Open Records Decision No. 454.

We agree with your contention that Open Records Decision No. 408 (1984) governs the requested documents. Open Records Decision 408 held that as long as a criminal investigation is open and the statute of limitations has not run, law enforcement agencies must release those types of information designated as public and may withhold those types of information designated as protected from required public disclosure as specified in Open Records Decision No. 127 (1976). You may, therefore, do the same here. Please note, however, that section 3(a)(8) is a permissive exception: you are not required to withhold any of this information pursuant to section 3(a)(8). Because this office determined that the requested information comes within the protection of section 3(a)(8), this letter ruling does not address your other arguments.

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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 OR89-93.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee*

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of the Opinion Committee  
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SA/RWP/bc

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