



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 12, 1989

Mr. Don J. Rorschach
Irving City Attorney
P. O. Box 152288
Irving, Texas 75015-2288

Dear Mr. Rorschach:

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# 6405; this decision is OR89-157.

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 Irving City Attorney's office received a request directed to the judges and clerk of a municipal court for 1) copies of cash escrow agreements and all court records pertaining to cash escrow agreements, 2) the names and salaries of municipal court personnel and 3) copies of warrants, affidavits and findings of probable cause in specific cases. You have provided for our review copies of cash escrow agreements and personnel time reports. You contend that this information is exempt from the act under section 2(1)(G), or, in the alternative, excepted from disclosure by sections 3(a)(1) and 3(a)(8) of the Open Records Act.

The Open Records Act does not apply to records of the judiciary. Open Records Decision No. 236 (1980). Municipal courts are part of the judiciary. They are created by statute pursuant to article 5, section 1, of the Texas

Constitution. Open Records Decision No. 35 (1974). The Open Records Act neither authorizes the judiciary to withhold information nor requires that the judiciary disclose information. Id. Therefore, information held by the courts that relate to court proceedings when the court acts in its judicial capacity is not available under the Open Records Act. Information that does not relate to court proceedings, however, is not exempt from the act. Benavides v. Lee, 665 S.W.2d 151 (Tex. App. - San Antonio 1983, no writ).

Your letter of May 9, 1989, implies that some of the requested information may be held by the municipal court clerk. In Open Records Decision No. 274 (1981), the attorney general determined that records held by a court clerk are available to the public. The clerk of a municipal court is directed to:

. . . keep minutes of the proceedings of the court, issue process, and generally perform the duties for the municipal court that a county clerk performs for a county court.

Gov't Code § 29.010(c). In turn, Local Government Code, section 192.006(a), prescribes certain duties of a county clerk:

The county clerk shall record each act and proceeding of the county court, record under direction of the judge each judgement of the court, and record the issuance of and return on each execution issued by the court.

Additionally, section 191.006 of the Local Government Code makes all records held by the county clerk "open to the public at all reasonable times." The provisions of the Local Government Code that prescribe the duties of county clerks and permit access to county clerk records are applicable to the clerk of a municipal court. See Open Records Decision No. 274. We conclude that all documents relating to cash escrow agreements that have been filed with the municipal court clerk are public.

The requestor also seeks the names and salaries of the Irving Municipal Court personnel. These records do not relate to court proceedings. The names and salaries of public employees are specifically made public by section 6(2) of the Open Records Act. See Open Records Decision Nos. 41, 14 (1974). You advise that the salary information

maintained by your office on personnel time reports contains additional information such as employee social security numbers, vacation leave, sick leave and emergency leave. You suggest that this additional information should be withheld from the requestor. Previous attorney general opinions have held that disclosure of social security numbers and leave information does not constitute an unwarranted invasion of an employee's personal privacy. See Open Records Decision Nos. 336 (1982); 14 (1974). The personnel time reports maintained by your office, copies of which you submitted for review, are public. The reports do not indicate details about why a person was absent from work. Such details might trigger privacy claims.

Finally, the requestor seeks copies of warrants, affidavits, findings of probable cause and additional cash escrow agreements. You did not provide a copy of the warrants, affidavits or findings of probable cause for review, but you contend that this information is protected from disclosure by sections 3(a)(1) and 3(a)(8) of the act. This office has held that all factual information related to arrest or search warrants, such as a list of officers who participated in the search or the name(s) of the arresting officer(s) is public. See Open Records Decision No. 362 (1983) (no significant distinction between factual information contained in an arrest or search warrant).

Section 3(a)(1) protects "information deemed confidential" by common-law or constitutional privacy. This section also protects the "informer's privilege." See Open Records Decision No. 515 (1988). Search and arrest warrants generally contain information about criminal activity supplied by persons who volunteer this information under a promise of confidentiality. The purpose of the "informer's privilege" is to protect the identity of informants who communicate violations of law to law enforcement officials. Id. Therefore, if the identity of the informant(s) on the search or arrest warrants is unknown to the party complained of and the informant has not served as a witness, the affidavits supporting the warrants may be withheld. Because this information is protected under section 3(a)(1), we do not address the applicability of section 3(a)(8).

You must release all of the information determined to be public by this ruling. Because case law and prior published open records decisions resolve your request, we

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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 OR89-157.

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/FAF/bc

Ref.: ID# 6405
6492

cc: Judge Mark Ovard
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