



**THE ATTORNEY GENERAL
OF TEXAS**

August 16, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. William J. Delmore, III
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002

Dear Mr. Delmore:

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# 7099; this decision is OR89-256.

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 District Attorney of Harris County received an open records request from a criminal defendant for certain witnesses' affidavits given to the Houston Police Department in connection with the defendant/requestor's criminal case. You contend that subsections 3(a)(3) and (a)(8) of the Open Records Act protect the affidavits from required public disclosure.

Section 3(a)(3) of the Open Records Act, known as the litigation exception, excepts from required public disclosure information relating to pending or reasonably anticipated civil or criminal litigation. Open Records Decision No. 452 (1986), but only if disclosure of the information would adversely affect the governmental body's litigation interests. Open Records Decision No. 493 (1988). You have not shown that the requested material meets these tests; consequently you may not withhold this information pursuant to section 3(a)(3). See Heard v. Houston Post, 684 S.W.2d 210 (Tex. App. - Houston [1st Dist.] 1984, writ ref'd n.r.e.).

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Section 3(a)(8), known as the "law enforcement" exception, excepts from required public disclosure records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime, but only if the release of the information would "unduly interfere" with law enforcement or prosecution. Open Records Decision No. 434 (1986). You have not demonstrated that the requested information meets this test. You may not, therefore, withhold the affidavits pursuant to section 3(a)(8). Because you raise none of the act's other exceptions to required public disclosure, the affidavits must be released.

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 OR89-256.

Yours very truly,

Open Government Section
of the Opinion Commission
Open Government Section
of the Opinion Commission
Approved by David A. Newton
Assistant Attorney General

DAN/bc

Ref.: ID# 7099
ID# 6886

cc: Mr. Archie D. Johnson
T.D.C. 443541
Rt. 1, Box 150
Tennessee Colony, Texas 75861

Honorable John B. Holmes, Jr.
Harris County District Attorney
201 Fannin, Suite 200
Houston, Texas 77002