



THE ATTORNEY GENERAL  
OF TEXAS

August 22, 1989

JIM MATTOX  
ATTORNEY GENERAL

Mr. Paul G. Stuckle  
Police Legal Advisor  
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City of Fort Worth  
350 W. Belknap St.  
Fort Worth, Texas 76102

Dear Mr. Stuckle:

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# 6558; this decision is OR89-264.

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 Fort Worth received an open records request for a police department audit report of the city's Crime Stoppers program. The purpose of the report was to examine the procedures used by the Crime Stoppers program, especially its method of dispensing funds to informants. The audit report discusses the background of the program and the procedures of the Fort Worth operations, compares them to other Texas city programs, and makes recommendations concerning improving the program. The city seeks to withhold the audit report from required public disclosure under sections 3(a)(1), (3), (8), and (11) of the open records act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." This section also protects the "informer's privilege." See Open Records

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Decision No. 515 (1989). You also cite article 414.008 of the Texas Government Code as a statute that makes the report confidential. Article 414.008 makes communications between an informant and the Crime Stoppers program privileged. This privilege is designed to protect the identity of informants.

The audit report in question here, however, does not reveal the identities of informers. Therefore, release of it would not compromise the anonymity of informers. The information may not be withheld under section 3(a)(1).

You suggest that the report is protected from disclosure under section 3(a)(3) of the act, which excepts information relating to litigation. You have not shown how the report relates to specific litigation, either pending or anticipated. See Creel v. Sheriff of Medina County, 751 S.W.2d 645 (Tex. App. - San Antonio, 1988, no writ). A governmental body bears the burden of showing how an exception to disclosure applies to information it seeks to withhold. Open Records Decision Nos. 252 (1980); 216 (1978). As you have not done so, the information may not be withheld under section 3(a)(3).

You also claim that the audit report is protected from disclosure under section 3(a)(8), the "law enforcement" exception. Whether this exception applies to particular records depends on whether their release would "unduly interfere" with law enforcement or prosecution. Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). Open Records Decision Nos. 434 (1986); 287 (1981). The primary purpose of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. See Open Records Decision Nos. 133, 127 (1976). Whether disclosure of particular records will unduly interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981).

Open Records Decision No. 216 held that information that revealed the identity of informants was protected from disclosure, as was information concerning the investigative techniques and procedures used in law enforcement. The audit report does not specifically discuss any investigative techniques or procedures. Nothing in the audit report reveals anything other than routine information -- a critique of the procedures used for passing money anonymously to informants. Nor is it clear how release of the report could enable criminals to evade detection and capture. You contend that disclosure of the audit report

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would have a chilling effect on the future of the Crime Stoppers program, which in turn would unduly interfere with law enforcement in Fort Worth because release of the report and possible publication in the media would send a "negative signal" to Crime Stopper informants who might conclude that that Crime Stopper operations are not kept confidential. You also claim that in order to insure the continued success of the program, the audit report must be exempt from public disclosure because the fear of retribution is overcome in an informant's mind only by assurances of strictest confidentiality and anonymity. This claim is too broad. You have not shown specifically how release of the report would unduly interfere with law enforcement and crime prevention. The report does not disclose information concerning the identity of anonymous informants. It discusses procedures for payoffs, and weaknesses in the payoff system. It is not about informants nor crime detection nor crime prevention per se. You have not shown how release of the report would render the program ineffective. The information in the report was gathered in order to assess a program that is related to citizen participation in crime detection. The information is to be used to improve the program, and only indirectly to improve crime prevention techniques. Therefore, you may not withhold the report under section 3(a)(8).

Finally, you claim that the report is excepted from disclosure under section 3(a)(11), which excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's deliberative process. See Open Records Decision Nos. 464 (1987); 239 (1980). The purpose of this section is "to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes." Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.) (citing Open Records Decision No. 222 (1979)).

Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation on sensitive policy matters. See Open Records Decision No. 450 (1986). If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982). The audit report describes the background of the Crime Stoppers program, which is factual

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information, and payoff practices, which is also factual information. The final part of the audit report is entitled "recommendation" and identifies problems with the Crime Stoppers program. You have not shown how this information plays a role in formulating policy. It simply identifies problems with how the program fails to comply with existing policy. It may not be withheld.

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 OR89-264.

Yours very truly,

*Open Government Section  
of the Opinion Committee*

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DAN/bc

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