



**THE ATTORNEY GENERAL  
OF TEXAS**

September 26, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Honorable Howard Phelps  
Marshal  
Village of Bayou Vista  
2929 Hwy. 6  
Hitchcock, Texas 77563

Dear Mr. Phelps:

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# 7370; this decision is OR89-318.

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 Marshal's Department of the Village of Bayou Vista received a request from the village mayor for copies of the employment applications for all the village's deputies. You ask whether you are required to release these applications.

We distinguish the mayor's request from a request by a citizen for records pursuant to the Open Records Act. In Attorney General Opinion JM-119 (1983) (copy enclosed), this office held that a member of the board of trustees of the Alamo Community College District had a special right of access, beyond the public's right, to records held by the district when the trustee was acting in an official capacity. Assuming that the mayor is seeking the deputies' applications for official reasons, Attorney General Opinion JM-119 governs your request and you must release these records as requested.

You also ask whether a local ordinance that provides that no deputy may be employed without the approval of the board of aldermen pertains to volunteer deputies who receive no compensation from the village. This is a question that falls outside the realm of the Open Records Act. Although this office is required by the Open Records Act to issue rulings as to the disclosure of records held by governmental bodies, see V.T.C.S. art. 6252-17a, § 7(a), this office is prohibited by section 402.045 of the Government Code from giving a written opinion to any persons other than those specified in sections 402.042 and 402.043 of that code. Consequently, we cannot be of assistance to you in this matter.

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 OR89-318.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee*

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of the Opinion Committee  
Approved by Jennifer S. Riggs  
Chief, Open Government Section

JSR/RWP/bc

cc: Honorable Roy Corley  
Mayor  
Village of Bayou Vista  
Hitchcock, Texas 77563

Ref.: ID# 7370

Enclosure: JM-119