



**THE ATTORNEY GENERAL
OF TEXAS**

October 10, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Lee Roger Ratliff
City Attorney
The City of Silsbee
105 South 3rd Street
Silsbee, Texas 77656

Dear Mr. Ratliff:

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# 6933; this decision is OR89-327.

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 Silsbee received a request from a journalist for information relating to alleged civil rights violations by the Silsbee Police Department in two specific cases, and for any documents, letters or memoranda relating to any "completely adjudicated" complaints made against the Silsbee Police Department alleging use of excessive force, deprivation of medical care, illegal search and seizure or deprivation of constitutional rights under color of law in 1987, 1988, and 1989. As to the request for complaints made against city police officers, the city contends that no such complaints have been made, with the possible exception of routine motions that may have been filed during the prosecution of cases, which would be in possession of the prosecuting attorney, not the police department. A government body may require a requestor to identify the particular kind of information sought if it cannot be reasonably understood from the request. Open Records

Mr. Lee Roger Ratliff

October 10, 1989

Page 2

Decision No. 304 (1982). If information is in the custody or control of a different branch of a government body than the one which actually received the request, a disclaimer of possession of the requested information cannot be used to circumvent the request. The request for information is effectively made to the branch holding the information, regardless which branch of the government body actually receives it. The City of Silsbee is the government body to which the request was made; the police department and the office of the city attorney are both parts of the city. A request to a part or division of the city is a request to whichever part or division possesses the information. Therefore, if the requested information is in the hands of the city's prosecuting attorney, it must be released by that office.

As to the request for reports, memos, letters and written statements or other documents relating to a particular case, the city claims not to have any records concerning one of the cases specified by the requestor, and directs the requestor to a county officer, outside the city's jurisdiction, for the information. The city is not required to obtain information from another government body or to supply information it does not have, nor is the city obligated to disclose information not in its possession. See Economic Opportunities Dev. Corp. v. Bustamante, 562 S.W.2d 266 (Tex. Civ. App. - San Antonio 1978, writ denied). If the city has no records or information relating to a specific case, please submit an affidavit to this office to that effect.

In its request for an open records decision, the city has not specifically cited an exception to required public disclosure under the act, though in its response letter to the requestor, the city cited section 3(a)(3) as a basis for withholding the requested information. In the future, requests for an open records decision must specifically cite the section of the act under which an exception to required public disclosure is claimed, otherwise it is waived. See Open Records Decision No. 252 (1980).

As to the information the city does have, the city seeks to withhold this information under section 3(a)(3) of the act because the records relate to an inmate who filed federal suit against the city and several city police officers, and thus, according to the city, the information relates to litigation. An agreed order of dismissal of the case was issued by a federal magistrate on August 22, 1989.

Mr. Lee Roger Ratliff

October 10, 1989

Page 3

Section 3(a)(3), known as the litigation exception, excepts from required public disclosure information related to civil or criminal litigation, either pending or reasonably anticipated, such that withholding the information is necessary to preserve the government body's strategy or legal interests in the litigation. See Open Records Decision No. 478 (1978).

You have not shown how withholding the requested information is necessary to preserve the government body's strategy or legal interests in anticipated or pending litigation. The case you mention has been dismissed. The information must therefore be released.

Note that final opinions, including orders made in the adjudication of cases, are specifically made public information under the act. V.T.C.S. art. 6252-17a, § 6(12). Information included in offense reports are open under the holding in Houston Chronicle Publishing Co. v. City of Houston, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976).

We note also that the information provided to this office for review constitutes only a small portion of the information requested. The request was much broader than the information you have submitted as responsive: it included a request for any reports, letters, memos, written statements or documents connected with a specific case. All you have submitted to this office for review are offense reports. If the city claims no other relevant information relating to the incident exists, or is in its possession, it must so state to the requestor and provide an affidavit to this office so declaring within ten days of the date of this letter.

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 OR89-327.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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Prepared by David A. Newton
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DAN/bc

Mr. Lee Roger Ratliff

October 10, 1989

Page 4

Ref.: ID# 6933

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