



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

October 27, 1989

Ms. Barbara J. Norwood
Iverson & Norwood
Attorneys at Law
104 East Clayton
P.O. Box 758
Dayton, Texas 77535

Dear Ms. Norwood:

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# 7626; this decision is OR89-350.

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. Attorney General Opinion H-436 (1974). The act does not require this office to raise and consider exceptions that you have not raised.

The Liberty Police Department received an open records request for all records relating to two United States Department of Justice investigations of alleged criminal violations of civil rights committed by Liberty police officers. You submitted to this office for review a witness statement from the individual whose civil rights were allegedly violated and the records of the subsequent police investigation of that complaint.

You raise none of the act's exceptions to required public disclosure with regard to these materials. The city also failed to seek a decision from this office within ten days of receipt of the open records request as required by section 7(a) of the Open Records Act. These records are therefore presumed to be public. Art. 6252-17a, § 7(a). Because the records at issue do not contain any information

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deemed confidential by law, you must release these materials to the requestor in their entirety. See City of Houston v. Houston Chronicle Publishing Co., 673 S.W.2d 316, 324 (Tex. App. - Houston [1st Dist.] 1984, no writ) (suggesting that governmental bodies must show constitutional privilege as basis for withholding information once the 10 day limit has passed).

You also state that these two documents are the only records the city possesses that come within the ambit of the open records request. So that this office may close its file on this matter, please submit an affidavit to this office within five days of receipt of this letter attesting to the fact that the city does not possess any of the other requested documents, i.e. correspondence between the city and the Justice Department or the FBI, and any other records reflecting an internal affairs investigation concerning this and the other requested file.

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 OR89-350.

Yours very truly,
*Open Government Section
of the Opinion Committee*

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

DAN/RWP/le

Ref.: ID# 7626

cc: Ms. Lorraine Adams
Staff Writer
The Dallas Morning News
Communications Center
Dallas, Texas 75265