



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

October 30, 1989

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Corrections
P. O. Box 99
Huntsville, Texas 77342-0099

Dear Mr. Peck:

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# 6936; this decision is OR89-352.

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 Texas Department of Corrections (the department) received a open records request from an inmate for information concerning any internal investigation conducted by the department on a named department officer due to complaints filed by inmates alleging harassment, physical or verbal assaults, conspiracy against inmates, or filing false incident reports. The requestor also seeks the dates of all complaints filed against the officer.

The department submitted as responsive to this request copies of memos to the officer regarding complaints filed against him. The department claims that these complaint notices are protected from disclosure under section 3(a)(1) of the Open Records Act, under the doctrine of false light privacy, because the complaints were not sustained and

Mr. Leonard W. Peck, Jr.

October 30, 1989

Page 2

because disclosure would implicate privacy interests of other inmates. The department also contends that the request for the dates of all complaints filed against the officer is logistically not feasible because inmate grievances against officers are filed by complaining inmates, and determining dates of complaints against a particular officer would require an inordinate effort on the department's part.

Section 3(a)(1) protects information deemed confidential by law, both by statute and by judicial decision. The request for information regarding complaints against a department officer is governed by Open Records Decision No. 484 (1987) (copy enclosed); see also Open Records Decision No. 208 (1978). The doctrine of false light privacy does not protect the information you have submitted.

Nor are the dates of complaints made against the officer protected from disclosure. The Open Records Act, however, applies only to information in existence. A governmental body is not required to prepare new information in response to a request. Open Records Decision No. 342 (1982). Consequently, if the department does not have a list of dates, it need not create one.

This does not mean, however, that the department can withhold documents that contain the requested dates. Governmental bodies may not consider costs or methods of supplying information in making its determination of whether such information should be disclosed. Open Records Decision No. 151 (1977). Although the department claims that to locate all inmates' grievances filed against the officer about whom the request is made would be logistically impossible because inmate grievances are filed by the name of the complaining inmates, we note that in the copies of notices sent to the officer, a notation is made indicating copies are to be included in the officer's personnel file. This fact undercuts the claim that to disclose dates of complaints against the officer would not be possible. The documents that reveal the dates of complaints against the named officer must be released.

The department also claims that providing the dates of complaints against the officer would violate the privacy rights of other inmates. However, since the request is for the dates of complaints, the privacy interests of other inmates are not implicated. The documents you submitted for review, inter-office memoranda, do not contain the name of the complaining inmate.

Mr. Leonard W. Peck, Jr.

October 30, 1989

Page 3

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 OR89-352.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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

DAN/le

Ref.: ID# 6936

Enclosure: ORD484
ORD-208

cc: Mr. David C. Johnson
Route 2, Box 2250
Palestine, Texas 75801