



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

November 21, 1989

Mr. Thomas F. Keever
Assistant District Attorney
Dallas County
Administration Building
Dallas, Texas 75202

Dear Mr. Keever:

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# 7534; this decision is OR89-388.

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. Attorney General Opinion H-436 (1974). 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.

Some time ago, Ms. Janie Clancy Williams sought information concerning the death and autopsy of Thomas Clancy, Sr. She was given only a fraction of the documents she requested. You have now submitted "the complete records of the Southwestern Institute of Forensic Sciences" concerning the death and autopsy of Mr. Clancy, Sr. It is now clear that Ms. Williams has received less than prompt and complete compliance with the Open Records Act.

You state that the only information the District Attorney's office has "steadfastly tried to protect from disclosure" is the Dallas Police Department's report. It is clear however, from review of the facts that a great deal of information aside from the Dallas Police Department's report was not provided. In specific, it is not clear whether the requestor has received items (2), (3), (4), (6), (7), (8),

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(9), or (11). These must be released immediately. By copy of this letter we are advising the requestor to notify this office if those items are not released.

You note that an October 8, 1987, letter from this office advises that information held by the Southwestern Institute of Forensic Sciences may be deemed to be within the constructive possession of the law enforcement agency that requests the services of the institute. The letter indicates that the agency should be afforded the opportunity to raise exceptions to disclosure. Although this may be true, it does not change the act's requirement that governmental bodies request an open records decision within 10 days of receipt of a request for information that the governmental body wishes to withhold. If you wish to raise exceptions you should make arrangements with the institute to notify you in a manner that allows you to handle open records requests in a timely fashion.

In placing a time limit on the production of public information, the legislature recognized the value of timely production of public information. See also V.T.C.S. art. 6252-17a, §§ 4 (the custodian shall "promptly" produce information for public information), and 13 (governmental body may promulgate rules to ensure that "public records may be inspected efficiently, safely, and without delay"). When a governmental body fails to request a decision within 10 days of receiving a request for information, the information at issue is presumed public. City of Houston v. Houston Chronicle Publishing Co., 673 S.W.2d 316, 323 (Tex. App. - Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. Open Records Decision No. 319. See also City of Houston v. Houston Chronicle Publishing Co., 673 S.W.2d at 324 (suggesting that governmental body must show constitutional privilege after 10 day limit).

You assert that section 3(a)(8) of the Open Records Act protects the Dallas Police Department report from required public disclosure. The police report at issue is simply a narrative description of the events leading up to finding the victim's body and the events following its discovery. The availability of some of the information in the report was addressed in informal decision OR89-093 and may be withheld. The report also contains the results of a polygraph examination given to a suspect. The polygraph results should be withheld. See Open Records Decision No. 430 (1985). You do not show how release of the first two pages of the report will "unduly interfere" with law

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enforcement and crime prevention. See Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). They must be released.

All of the information you submitted for review, i.e., (1) the Certificate of Death, (2) the investigation report from the Medical Examiner's Office, (3) autopsy hand written notes, (4) the preliminary cause of death report, (5) the autopsy report, (6) lab reports, (7) institute lab reports, (8) internal records and body release authorization, (9) notes of phone calls, (10) the request for copies of autopsy reports, (11) Medical Examiner's code sheet, and (12) Dallas Police Department reports, must be released to the requestor, except as indicated herein with regard to the Dallas Police Department report.

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 OR89-388.

Yours very truly,

Open Government Section
of the Opinion Committee

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

JSR/le

Ref.:	ID# 7534	ID# 6898
	ID# 8062	ID# 6020
	ID# 7676	ID# 5993
	ID# 7605	ID# 5953
	ID# 7577	ID# 5898
	ID# 7464	ID# 5666
	ID# 7302	ID# 5632
	ID# 7225	ID# 5275
	ID# 7139	ID# 5251
	ID# 5111	ID# 5178
	ID# 5143	

cc: Ms. Janie Clancy Williams
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