



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

December 7, 1989

Mr. Paul G. Stuckle
Police Legal Advisor
Assistant City Attorney
Fort Worth Police Department
350 W. Belknap St.
Fort Worth, Texas 76102

Dear Mr. Stuckle:

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# 6786 and ID# 7283; this decision is OR89-403.

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.

The City of Fort Worth Police Department received an open records request from an inmate for information related to his arrest for burglary of a habitation. You submitted as responsive to his request copies of the offense report with supplements, including a narrative of the offense by a police officer, an arrest warrant and warrant affidavit, and a wanted person data input form for entry of information into the NCIC-TCIC criminal data information system. The city supplied these documents to the inmate requestor with deletions of certain information it considered confidential pending a request for a decision from this office. The city contends that the information deleted from these documents is excepted from required public disclosure under subsections 3(a)(1), (a)(2), (a)(3), (a)(8), and (a)(11) of the Open Records Act.

This office has previously determined that the type of information at issue here is available in its entirety to the inmate to whom it relates or his attorney on request under due process principles independent of the Open Records Act. See Attorney General Opinion MW-95 (1979).

Section 3(a)(1) of the Act protects information deemed confidential by law, either Constitutional, statutory, or by judicial decision. The names of burglary victims are not protected from disclosure under section 3(a)(1). See Open Records Decision No. 409 (1984). Nor does the informer's privilege aspect of section 3(a)(1) apply to the complainant who files charges against a person, or to any person who is otherwise already known to the arrestee. See Open Records Decision No. 515 (1988).

Section 3(a)(3), the litigation exception, protects information relating to litigation of a criminal or civil nature. Even when litigation is pending, however, section 3(a)(3) does not apply to basic factual information. See Open Records Decision Nos. 511 (1988); 208 (1978). The information at issue here is not excepted under section 3(a)(3).

Section 3(a)(8), the law enforcement exception, excepts from required public disclosure "records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime." In Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976), the court of civil appeals established guidelines on what constitutes public information contained in police offense reports. A detailed description of the offense, time, and place of offense, and the identity of the complainant and investigating officer are public information. See Open Records Decision No. 127 (1976).

Disclosure of criminal history record information which would subject a law enforcement agency to termination of participation in interstate information exchange systems is not required by section 3(a)(8). See Open Records Decision No. 216 (1978). You may withhold the warrant data input form. None of the other information is excepted from disclosure under section 3(a)(8).

Section 3(a)(11) excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion or recommendations intended for use in an agency's deliberative, policy-making process. See

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Open Records Decision No. 464 (1987). None of the information requested here constitutes inter-agency memoranda nor does it contain any advice, opinions, or recommendations. It is not protected from public disclosure under section 3(a)(11).

With the exception of the NCIC/TCIC wanted person data input form, you must release, uncensored, all of the information to the requestor. 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 OR89-403.

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


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

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Ref.: ID# 7283
ID# 6786

cc: Mr. Tommy Crowder
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