



## THE ATTORNEY GENERAL OF TEXAS

January 21, 1987

**JIM MATTOX**  
**ATTORNEY GENERAL**

Mr. Lee P. Brown  
Chief of Police  
City of Houston  
61 Riesner Street  
Houston, Texas 77002

Open Records Decision No. 456

Re: The availability of forms  
relating to businesses which employ  
"off-duty" police officers

Dear Mr. Brown:

You received a request under the Texas Open Records Act, article 6252-17a, V.T.C.S., for access to forms titled "Record By Business of Officers Employed" maintained by the personnel division of the Houston Police Department. These forms contain information about businesses which perceive a need for extra security and which employ police officers during their "off-duty" hours to fill that need. The forms specify the location, type, and reputation of specific businesses. They specify whether the officer will be wearing a uniform. The requestor expressed particular interest in the forms maintained on businesses that serve alcoholic beverages. You indicate that under the "comment" section, the forms also state whether the department granted permission to a particular officer to take the outside employment and the reasons for granting or denying permission.

As a preliminary matter, this decision is rendered pursuant to section 7 of the Open Records Act and does not address, expressly or impliedly, the wisdom or legal ramifications of the private "off-duty" employment of police officers. See generally Attorney General Opinions JM-509 (1986); JM-140 (1984). You refer to the employment in question as "off-duty" employment. It should be noted that a commissioned peace officer is "on-duty" at all times with regard to his obligation to prevent any breach of the peace that he observes in his jurisdiction. Attorney General Opinion JM-140. Consequently, references in this decision to "off-duty" employment are for convenience only; such references do not approve an "off-duty" status.

Under the Open Records Act, information is open unless it falls within one of the act's specific exceptions to disclosure. You assert that sections 3(a)(1), 3(a)(2), 3(a)(8), 3(a)(10), and 3(a)(11) except these forms from public disclosure.

Section 3(a)(8) excepts from disclosure

records of law enforcement agencies and prosecutors that deal with the detection, investigation,

and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

See Houston Chronicle Publishing Company v. City of Houston, 536 S.W.2d 559 (Tex. 1976); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). Information is excepted from disclosure by section 3(a)(8) if release of the information will "unduly interfere with law enforcement and crime prevention." Open Records Decision No. 434 (1986), citing Ex parte Pruitt, supra, at 710.

The circumstances surrounding the collection of particular information determine whether release of the information will unduly interfere with law enforcement and crime prevention; a case-by-case approach applies. Open Records Decision No. 434. You indicate that the police department

needs to know when there are special security situations existing within the city limits which may require special handling.

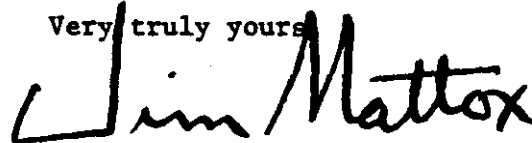
The forms reveal the occasions on which certain businesses take extra security measures. By negative implication, the forms also reveal which businesses do not employ "off-duty" police officers. Although the forms relate to attempts made by the businesses to deal with security problems, you indicate that the information is also vital to the police department's crime prevention activities. Section 3(a)(8) protects information which reveals special investigative techniques. Open Records Decision Nos. 216, 211 (1978). Despite the fact that the information relates primarily to what you characterize as "private" employment, the information has independent significance to law enforcement activities.

Moreover, the form reveals that certain police officers will be at a particular place at a particular time. The form states whether the officer will be in "uniform or plainclothes." Section 3(a)(8) does not ordinarily protect general personnel information such as a particular officer's age, law enforcement background, and previous employment. See Open Records Decision No. 329 (1982). Section 3(a)(8) does, however, protect information which, if revealed, might endanger the life or physical safety of law enforcement personnel. Open Records Decision No. 216 (1978). The law enforcement exception also protects information which reveals when and where employees travel on sensitive assignments. Open Records Decision No. 211 (1978). It has been asserted that, if police officers wear their uniforms during their "outside" employment, their location and identity can hardly be deemed confidential. From a standpoint of security, however, there is a difference between knowing in advance whether a uniformed police

officer will be at a particular location and noticing only upon visiting a particular business whether a uniformed officer is present.

Consequently, section 3(a)(8) protects all of the information contained on forms titled "Record By Business of Officers Employed" maintained by the personnel division of the Houston Police Department. It is therefore unnecessary to address whether the other exceptions to the Open Records Act which you cite apply to the information at hand.

Very truly yours

A handwritten signature in black ink that reads "Jim Mattox". The signature is stylized with a large, sweeping "J" and "M".

J I M M A T T O X

Attorney General of Texas

JACK HIGHTOWER  
First Assistant Attorney General

MARY KELLER  
Executive Assistant Attorney General

RICK GILPIN  
Chairman, Opinion Committee

Prepared by Jennifer Riggs  
Assistant Attorney General