



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 9, 1989

Mr. Rex McEntire
City Attorney
City of North Richland Hills
P. O. Box 18609
North Richland Hills, Texas 76180

Dear Mr. McEntire:

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# 5056; this decision is OR89-009.

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 City of North Richland Hills received an open records request for all "salary and salary related information . . . i.e. base salary, overtime, TMRS, etc." for all police officers that have been employed by the city for the past three years. You state that you intend to release all information concerning police officers' base salaries "without question." You contend, however, that subsections 3(a)(1) and (2) of the Open Records Act except from required public disclosure information pertaining to overtime paid to police officers because:

There are certain officers who object to making their overtime public. To anyone with limited knowledge of the department it would be made clear through overtime records who would be most likely to be working undercover

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on drug enforcement activities and other clandestine operations.

Section 3(a)(2) of the act protects:

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act.

The test for section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1): to be protected from required disclosure, the information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546 (Tex. App. - Austin, 1983, writ ref'd n.r.e.). Information is not excepted by common-law privacy merely because it might cause some embarrassment to an individual. Open Records Decision No. 316 (1982). This office has held that information relating to one's credit history meets the common-law privacy test, Open Records Decision No. 481 (1987); as does certain medical history information. Open Records Decision No. 455 (1987), but see Open Records Decision No. 336 (1982) (names of employees taking sick leave and dates thereof are not excepted by section 3(a)(2)).

This office questions whether the revelation of the fact that a police officer participates in "drug enforcement activities and other clandestine operations" constitutes an invasion of privacy. We need not reach this question, however, because we note that working "undercover" is not the sole reason police officers receive overtime pay. Officers are frequently allowed to work overtime because of additional routine duties, staff shortages, and budget surpluses.

The amount of overtime a city pays to individual police officers does not meet the section 3(a)(2) test: it is not "highly intimate or embarrassing" information about one's "private affairs," and the public has a legitimate interest in knowing the amount of public monies that is spent on police overtime pay. You may not, therefore, withhold this

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information pursuant to subsections 3(a)(1) or (2). You have not raised any of the act's other exceptions to required public disclosure; you must, therefore, release this information.

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 OR89-009.

Yours very truly,

Open Government Section
of the Opinion Committee 

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of the Opinion Committee
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JSR/RWP/bra

Copies to: M.L. Pitts

Ref: ID# 5056