



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 10, 1989

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

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# 5103; this decision is OR89-40.

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 (TDC) received an open records request from a former TDC employee for access to his personnel file and any Internal Affairs Division (IAD) investigative reports pertaining to him. You contend that subsections 3(a)(1), 3(a)(3), 3(a)(8), and 3(a)(17) of the Open Records Act excepts portions of the requested documents from required public disclosure. You have not shown why section 3(a)(3) protects the requested information; consequently, this section is inapplicable.

Section 3(a)(17) protects from public disclosure the home address and telephone number of public employees, provided that the employee has elected not to allow this information to be released to the public. Assuming that the requirements of section 3A of the act have been met, you may withhold this information.

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You contend that section 3(a)(1) of the Open Records Act, pursuant to the informer's privilege, excepts from public disclosure all inmate witness statements. When it is apparent from an examination of the facts of a particular case that disclosure might subject the witnesses to possible intimidation or harassment and thereby harm the prospects of future cooperation between witnesses and law enforcement officers, the names and statements of witnesses may be withheld. See Open Records Decision No. 515 (1988). You may in this instance withhold all information tending to identify inmates, including the content of their statements to TDC officials.

Section 3(a)(1) of the act also protects the constitutional right to privacy. This office has previously held in an informal open records ruling to TDC that records pertaining to "piddling" work performed by TDC inmates are protected from public disclosure by the constitutional right to privacy. See OR88-260. You should, therefore, withhold these records as well as records reflecting withdrawals and deposits from inmates' trust fund accounts.

Section 3(a)(8) is known as the "law enforcement" exception. Whether this exception applies to particular records depends on whether their release would unduly interfere with law enforcement or prosecution. Open Records Decision No. 434 (1986). The applicability of section 3(a)(8) must be determined on case-by-case basis. Attorney General Opinion MW-381 (1981). Consequently, your contention that section 3(a)(8) protects each and every document placed in an IAD report is without merit.

After carefully reviewing the documents in question, this office has determined that only the documents numbered 46 and 47 come under the protection of section 3(a)(8). Please note that the information contained in the Walker County Sheriff's Office report is public and must be released. See 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 remaining information is not protected by the exceptions you have raised. Except as outlined above, you must release all of the documents requested.

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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 OR89-40.

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/RWP/bc

Copies to: Richard Folts
3326 Frick Rd.
Houston, Texas 77086

Ref: ID# 5103