



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

February 15, 1989

Ms. Trudi Dill  
Acting City Attorney  
City of Temple  
Municipal Building  
Temple, Texas 76501

Dear Ms. Dill:

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# 5576; this decision is OR89-52.

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 Temple received an open records request for all letters of reprimand issued to a certain city employee. You contend that these reprimands may be withheld from required public disclosure pursuant to section 3(a)(2) of the Open Records Act and have submitted copies of the requested information to this office for review. In the future, please also submit a copy of the letters from individuals who request information.

Section 3(a)(2) protects "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 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

Ms. Trudi Dill  
February 15, 1989  
Page 2

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.). If information bears on the qualifications for employment, the terms of employment, the separation from employment, and anything else bearing on the employment relationship, it may not be withheld pursuant to section 3(a)(2). See Open Records Decision No. 332 (1982). The public has a legitimate interest in a public employee's job performance.

The letters of reprimand submitted to this office do not come under the protection of section 3(a)(2). You have raised none of the act's other exceptions with regard to these documents. You must, therefore, release these letters.

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 OR89-52.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee*

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

JSR/RWP/bc

Ref: ID# 5576