



THE ATTORNEY GENERAL
OF TEXAS

February 17, 1989

JIM MATTOX
ATTORNEY GENERAL

Mr. Paul G. Stuckle
Police Legal Advisor
Assistant City Attorney
1000 Throckmorton
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# 5234; this decision is OR89-62.

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 Fort Worth Police Department received a request for a copy of a federal grand jury subpoena issued for the department's investigativen records on a Senior Assistant City Manager and an attorney. On behalf of the department, you assert that this subpoena is protected from required public disclosure under sections 3(a)(1), 3(a)(3) and 2(1)(G) of the Open Records Act.

Section 3(a)(1) of the Open Records Act protects from required public disclosure

information deemed confidential by law,
either Constitutional, statutory, or by
judicial decision.

This section incorporates specific statutes that protect information from public disclosure.

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Section 6(e)(2) of the Federal Rules of Criminal Procedure indicates that a general rule of secrecy surrounds federal grand jury proceedings, a violation of which may be punished as a contempt of court. Section 6(e)(6) of the rules specifically provides:

Records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for such time as is necessary to prevent disclosure of matters occurring before a grand jury. (Emphasis added.)

A federal subpoena identifies the information to be reviewed by the grand jury. Section 6(e)(6) provides that until a federal court determines that the contents of a subpoena issued by a grand jury can be disclosed, the subpoena will remain in effect and sealed from public scrutiny. There is no information in the subpoena itself, nor have we found any statutory authority or judicial decision that places a limit on the amount of time a federal subpoena may be sealed. Therefore, we can only conclude that the subpoena became a sealed document at the time it was issued and should remain sealed pending a determination by the court. At present, we have no information indicating that the federal court has made the subpoena available for public inspection. The subpoena may be withheld from the requestor. See Open Records Decision No. 403 (1983); cf. Open Records Decision No. 513 (1988).

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 OR89-62.

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/FAF/bra

cc: Dan Malone
The Dallas Morning News
Communications Center
Dallas, Texas 75265

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