



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

February 20, 1989

Mr. David M. Douglas  
Texas Department of Public Safety  
5805 N. Lamar Blvd.  
P. O. Box 4087  
Austin, Texas 78773-0001

Dear Mr. Douglas:

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# 5332; this decision is OR89-64.

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.

You received a request for documents relating to a fatal accident. You have agreed to release a copy of the accident report, but assert that the remaining information is exempt from disclosure under sections 3(a)(3) and 3(a)(11) of the act. You stated that a criminal case for negligent homicide was filed as a result of the accident and that the case is pending presentation to a grand jury. This

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office agrees that you may withhold the information submitted under section 3(a)(3). Therefore, your section 3(a)(11) argument will not be addressed.<sup>1</sup>

You should be aware that section 3(a)(3) has a time limitation: the section protects information from disclosure only as long as litigation is pending. The Open Records Act was amended to provide that in criminal cases, litigation is deemed pending as long as the applicable statute of limitations has not expired and all appellate and postconviction remedies have not been exhausted. V.T.C.S. art. 6252-17a, § 3(e). If the case is dismissed, section 3(a)(3) would similarly not apply. Once the case is no longer pending, the information must be released.

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 OR89-64.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee*

Open Government Section  
of the Opinion Committee  
Prepared by Patricia Barnhard  
Assistant Attorney General

PB/bc

Copy to: Mr. Dave Wood  
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1000 Louisiana  
Houston, Texas 77002

Ref.: ID# 5332

Enc. (copies of materials submitted)

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1. This office notes, however, that section 3(a)(11) does not apply to facts and written observation of facts. Open Records Decision No. 450 (1986). Most of the information you submitted is factual.