



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 6, 1989

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

Dear Mr. Perry:

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# 4952; this decision is OR89-79.

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 Dallas Police Department received an open records request for "all available files" pertaining to the requestor's 1975 murder conviction. You state that the city intends to release all of the requested records except for the identities and addresses of civilians who witnessed the murder. You contend that subsections 3(a)(1) and 3(a)(8) of the Open Records Act protect this information. This letter ruling addresses only your section 3(a)(1) arguments.

You contend that section 3(a)(1) of the Open Records Act, pursuant to the informer's privilege, excepts this information from public disclosure. Two reasons for withholding names and statements of witnesses, despite the absence of a criminal prosecution, are that disclosure might either "subject the witnesses to intimidation or harassment or harm the prospects of future cooperation between

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witnesses and law enforcement authorities." Open Records Decision No. 252 (1980). Where criminal investigations are closed, however, these two factors must be examined on a case by case basis before governmental bodies may withhold such information. Id.

In this instance, this office agrees that the names and addresses of the civilian witnesses should be withheld, assuming that none of this information has previously been made available to the requestor, e.g., through discovery or through disclosure in court. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the party complained against. See Open Records Decision No. 208 (1978).

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 OR89-79.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee
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Ref: ID# 4952