



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

March 16, 1989

Ms. Ilse D. Bailey-Graham  
Assistant City Attorney  
City of College Station  
P. O. Box 9960  
College Station, Texas 77842-0960

Dear Ms. Bailey-Graham:

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# 5699; this decision is OR89-86.

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 College Station Police Department received a request from the Bryan-College Station Eagle for copies of an "offense report . . . alleging indecency with a child," and any other documents related to the investigation. The requestor has indicated that she would accept such documents with the names of the minors involved deleted from the reports. You have provided for our review the offense report, which includes the investigating officer's narrative summary of the incident, an "Additional Facts Sheet," which includes the names of witnesses, victims and other persons questioned, a "Patrol Supplement Report," signed witness statements and other related documents. On behalf of the police department, you assert that although the criminal investigation has been closed and no prosecution is pending, the investigative report is exempt from required public disclosure under section 3(a)(8) of the Open Records Act.

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Information is exempt from disclosure by section 3(a)(8) if release of the information will unduly interfere with law enforcement and crime prevention. Open Records Decision No. 127 (1976) expressly deemed as public the front page of a police offense report, including such information as:

1. Offense committed.
2. Location of crime.
3. Identification and description of complainant.
4. Premises involved.
5. Time of occurrence.
6. Property involved.
7. Vehicle involved.
8. Description of weather.
9. Detailed description of offense.
10. Names of investigating officers.

However, such information may be withheld if the law enforcement agency raises a legitimate interest in withholding such information. 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); see Open Records Decision No. 216 (1978).

Section 3(a)(8) applies to active investigations as well as to those investigations that do not lead to prosecution. Open Records Decision No. 127 (1976). It is less likely, however, that section 3(a)(8) will apply to a closed file. Section 3(a)(8) will apply to inactive or "closed" investigations when: 1) witnesses names and statements were obtained during the investigation under a promise of confidentiality made by a law enforcement officer, or 2) witnesses names and statements were obtained absent a promise of confidentiality, but when it is apparent from an examination of the facts of the case that disclosure might either subject the witnesses to possible intimidation or harassment, or harm the prospects of future cooperation between witnesses and law enforcement officers. Section 3(a)(8) does not apply here except to the extent that witness statements may be withheld.

You also argue that the investigative report should not be released because the crime alleged is of such an offensive nature that both the victims and suspect have a strong interest in keeping the information private. Your argument regarding the victims is reasonable. The nature of the information supports the contention that it may have been given in confidence. The names of victims of sexual

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abuse may be withheld, along with any information that would tend to identify the child. Open Records Decision No. 339 (1982).

Because the release of confidential information could impair the rights of third parties and because its improper release constitutes a misdemeanor, the attorney general will raise section 3(a)(1) on behalf of governmental bodies. Section 3(a)(1) protects "information deemed confidential by law," including common law privacy. Section 3(a)(1) protects most of the information at issue. The documents are marked accordingly.

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 OR89-86.

Yours very truly,

*Open Government Section  
of the Opinion Committee*

Open Government Section  
of the Opinion Committee  
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JSR/FAF/bc

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Ref.: ID# 5699

Enclosures