



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

April 12, 1989

Mr. Leonard W. Peck, Jr.  
Texas Department of Corrections  
P. O. Box. 99  
Huntsville, Texas 77342-0099

Dear Mr. Peck:

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# 5926; this decision is OR89-119.

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 Texas Department of Corrections (TDC) received an open records request for documents pertaining to a TDC internal investigation of allegations against specific corrections officers. The investigation, which resulted from an anonymously written letter to Judge Justice, revealed that the allegations against the officers were unfounded. You contend that subsections 3(a)(1), 3(a)(3), 3(a)(7), 3(a)(8), and 3(a)(11) of the Open Records Act protect the requested information from required public disclosure. Because section 3(a)(1) protects this information, this open records ruling addresses only that section.

Section 3(a)(1) protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common-law right to privacy. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied 430 U.S. 931 (1977). Texas courts recognize four categories of

Mr. Leonard W. Peck, Jr.  
April 12, 1989  
Page 2

common-law privacy, including "false light in the public eye." A governmental body must withhold information under section 3(a)(1) on the basis of "false light" privacy only if it finds that release of the information would be highly offensive to a reasonable person, that public interest in disclosure is minimal, and that serious doubt exists about the truth of the information. Open Records Decision No. 438 (1986).

In Open Records Decision No. 308 (1982), this office held:

Unlike a court, we cannot ordinarily determine the truth or falsity of particular information, but where, as here, (1) the information is communicated to a public body by an anonymous source; (2) the agency makes a determination that the information is not in fact true; and (3) the public interest in disclosure is minimal, we will presume its falsity.

This office believes that Open Records Decision No. 308 controls the availability of the information at issue. The allegations, which the investigation proved to be unfounded, are of such a nature that a reasonable person would find them highly offensive. This type of spurious information is of minimal public interest. You may, therefore, withhold the requested documents pursuant to section 3(a)(1).

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 OR89-119.

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

Mr. Leonard W. Peck, Jr.  
April 12, 1989  
Page 3

Copies to: David C. Johnson  
          #295880  
          Rt. 2, Box 2250  
          Palestine, Texas 75801

Ref.: ID# 5926  
      ID# 5464  
      ID# 5402