



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

May 17, 1989

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
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# 6172; this decision is OR89-148.

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 from a TDC inmate for "copies and inspection of all information contained in the [inmate/requestor's] TDC inmate record." The inmate record contains a wide variety of documents pertaining to the inmate, including court records, grievances filed by the inmate, inter-office memoranda, classification notes, and notations of the inmate's "travels" while in TDC. You contend that sections 3(a)(7) and (11) of the Open Records Act protect these records from disclosure. This letter ruling addresses only the documents currently being requested.

Your contention that the records at issue here are made confidential by the Stipulated Modification to the Ruiz Amended Decree has been addressed and rejected in previous open records rulings. See OR88-285, OR88-239 (1988). These rulings held that the Stipulated Modification does not

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authorize the withholding of "sensitive information" from the inmate to whom it relates. This office declines to reconsider those prior rulings at this time. The only information that you may withhold from the requestor pursuant to section 3(a)(7), which protects information protected by court order, are those portions of the inmate's files that identify other inmates. Please see the attached summary of the documents that contain information that you may withhold pursuant to section 3(a)(7).

Section 3(a)(11) of the act excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's deliberative process. Open Records Decision No. 464 (1987). Only a very small portion of the requested documents comes within the protection of section 3(a)(11). We have marked those portions of the inter-office memoranda dated November 11, 1983, contained in Attachment B that you may withhold pursuant to section 3(a)(11); you must release the remaining documents to the requestor.

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 OR89-148.

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

Enclosures: Marked documents

cc: David C. Johnson  
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Palestine, Texas 75801

Ref.: ID# 6172  
ID# 5926  
ID# 5772  
ID# 5464  
ID# 5402

APPENDIX: PROTECTED DOCUMENTS (by page number)

ATTACHMENT B	ATTACHMENT C	ATTACHMENT E
95	82	40
96	83	41
103	91	46
105	98	
115	99	
147 (3(a)(11))		
173		

ATTACHMENT D

PUBLIC (WHOLE THING)