



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 10, 1989

Mr. Gary Smith
City Attorney
P. O. Box 1967
Texarkana, Texas 75504

Dear Mr. Smith

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# 6639; this decision is OR89-198.

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 Texarkana has received a request under the Open Records Act for the disclosure of an investigative report prepared at the request of the city manager by the Texarkana Police Department, which was later presented to the city council. The report deals with a confrontation between the Texarkana Fire Chief and employees of an ambulance service that is permitted to operate in the city. Although you have released an edited version of the report, you contend that the names of witnesses to the incident, their statements, and synopses of their statements are excepted from disclosure to the public under section 3(a)(8) of the act.

Section 3(a)(8), known as the "law enforcement" exception, excepts from required public disclosure:

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records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Whether this exception applies to particular records depends on whether their release would "unduly interfere" with law enforcement prosecution or crime prevention. Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). Open Records Decision Nos. 434 (1986); 297 (1981). Whether disclosure of particular records unduly interferes with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). One of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. See Open Records Decision Nos. 133, 127 (1976).

You claim that because the news media has expressed a great deal of interest in the incident covered by the report, persons whose statements form a part of the investigation would be subjected to harassment and intimidation by the media, and that this would limit their cooperation in future investigations. The names and statements of witnesses may be withheld from disclosure if from an examination of the facts of a particular case, disclosure of the names and statements would subject the witnesses to intimidation or harassment by the criminal suspects complained of and thereby harm the prospects of future cooperation between the witnesses and law enforcement officers. See Open Records Decision Nos. 397 (1983); 297 (1981). In this case, your claim is too broad. It is the clear burden of the governmental agency to show how and why a particular exception applies to requested information. Open Records Decision No. 216 (1978). Media interest does not constitute harassment or intimidation within the scope of section 3(a)(8), and there is no indication in the communications from the media that you enclosed with your request that the witnesses who gave statements during the investigation are in any danger of harassment or intimidation from criminal suspects. Since the report was completed and presented to the city council, the witnesses' future cooperation in this investigation is not at stake. Therefore, the names and statements of witnesses are not excepted from disclosure under section 3(a)(8).

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We also note that section 6(1) of the Act specifically makes public

reports, audits, evaluations, and
investigations made of, for, or by
governmental bodies on completion.

You indicate the report was completed and presented to the city council. Under this section, such a report is specifically deemed open to the public if not otherwise excepted from disclosure. When information falls within one of the categories of public information listed in section 6, it is less likely that the act's exceptions to disclosure will apply. See, e.g., Open Records Decision Nos. 514, 511 (1988).

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 OR89-198.

Yours very truly,

*Open Government Section
of the Opinion Committee* *DN*

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of the Opinion Committee
Prepared by David A. Newton
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DAN/bc

Ref.: ID# 6639

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