



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

July 11, 1989

Mr. Paul G. Stuckle  
Police Legal Advisor  
Assistant City Attorney  
Fort Worth Police Department  
350 W. Belknap St.  
Fort Worth, Texas 76102

Dear Mr. Stuckle:

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# 5503; this decision is OR89-199.

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 Fort Worth Police Department received an open records request from an inmate of the Tarrant County Jail for the arrest warrant and police reports pertaining to his arrest for aggravated sexual assault of a child. You state that you released to the requestor copies of these reports, deleting the names and addresses of the witnesses and victim. You contend that subsections 3(a)(1), (3) and (8) protect the deleted information from required public disclosure.

Section 3(a)(1) of the act 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 Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976), cert. denied,

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430 U.S. 930 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. Id. at 683-85.

The description of incidents of sexual abuse and the names of victims of serious sexual offenses are protected by the common-law right to privacy. Open Records Decision No. 440 (1986). You must, therefore, withhold this information pursuant to the common-law aspect of section 3(a)(1). We note that you have released to the suspect/requestor details of the alleged sexual abuse that were made against him. These details should not be released to the general public. See generally Open Records Decision No. 481 (1987).

You also contend that section 3(a)(1) of the Open Records Act, pursuant to the informer's privilege, excepts from public disclosure witnesses' identities. The reason for withholding names of witnesses is that disclosure might subject the witnesses to intimidation or harassment and thereby harm the prospects of future cooperation between witnesses and law enforcement authorities. See Open Records Decision No. 252 (1980).

We note that the suspect occasionally visited the victim's parents at their home and on at least one occasion "baby-sat" the victim. These facts, when combined with the other information released to the requestor in the excised copies of the incident reports and arrest warrant affidavit, give the suspect knowledge of the identities of the witnesses. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant serves as a witness or the informant's identity is otherwise known to the party complained of. See Open Records Decision No. 208 (1978). This information, therefore, does not come under the protection of the informer's privilege, and for similar reasons, may not be withheld pursuant to subsections 3(a)(3) or (8). Consequently, this information must be released to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter

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with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-199.

Yours very truly,

*Open Government Section  
of the Opinion Committee*

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of the Opinion Committee  
Approved by Jennifer S. Riggs  
Chief, Open Government Section

JSR/RWP/bc

cc: Billie Priester, Inmate of the  
Tarrant County Jail  
Criminal Courts Building  
300 W. Belknap  
Fort Worth, Texas 76102-2084

Ref.: ID# 5503