



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

July 17, 1989

Mr. V. O. "Butch" Carden, Jr.  
City Attorney  
City of Wallis, Texas  
P. O. Box A  
East Bernard, Texas 77435

Dear Mr. Carden:

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# 6791; this decision is OR89-213.

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 Wallis received a request for the personnel files of two of the city's police officers. You raise none of the act's exceptions to required public disclosure and state that the city has no objection to releasing the files. Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, see Open Records Decision No. 455 (1987), we will raise section 3(a)(1), which protects information deemed confidential by law, because the release of confidential information could impair the rights of third parties and because its improper release constitutes a misdemeanor. See V.T.C.S. art. 6252-17a, § 10(a), (e). Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

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Review of the documents at issue reveals that the only information "deemed confidential by law" are those records that are created or maintained by a physician and that contain the identity, diagnosis, evaluation, or treatment of a patient, see V.T.C.S. art. 4495b, § 5.08(b), and the home addresses and telephone numbers of the peace officers. See V.T.C.S. art. 6252-17a, §§ 3A, 3(a)(17). This information must be withheld. You must release, however, the remaining information.

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 OR89-213.

Yours very truly,

*Open Government Section  
of the Opinion Committee*

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Approved by Jennifer S. Riggs  
Chief, Open Government Section

JSR/RWP/bc

Ref.: ID# 6791