



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 3, 1989

Mr. Michael J. Guarino
Criminal District Attorney
Galveston County, Texas
405 County Courthouse
Galveston, Texas 77550

Dear Mr. Guarino:

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# 7051; this decision is OR89-228.

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 office of the Galveston County Criminal District Attorney received a request from an inmate for the file on the charge for which the inmate is now serving time. You suggest that the informer's privilege aspect of section 3(a)(1) and/or section 3(a)(8) protect parts of the requested reports.

You do not indicate which, if any, of the individuals named in the report are confidential informants; this is not clear on the face of the reports. To be protected as an informant, an individual must report a violation of the law. Open Records Decision No. 515 (1988). Further, the individual could not be expected to testify as a witness. See Tex. Rules Civ. Evid., Rule 508. You do not indicate that any of the individuals names in the report have been treated as confidential informants. Please indicate, within 5 days of receipt of this letter which, if any, of the named individuals are confidential informants. If you show that

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any individuals are, we will authorize the deletion of their names.

You also suggest that the portion of the report that refers to three possible murders may be protected by section 3(a)(8), the law enforcement exception. Section 3(a)(8) protects information the release of which would "unduly interfere" with law enforcement and crime prevention. Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). You do not show how release of the information would unduly interfere with law enforcement. Ordinarily, for the release of the information to unduly interfere with law enforcement, it must allow an individual to violate the law while avoiding detection. The individual in question can hardly evade detection while incarcerated in a Federal Correctional Institution. You have not shown that release of the information will unduly interfere with law enforcement.

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 OR89-228.

Yours very truly,

Open Government Section
of the Opinion Committee

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

JSR/bc

Ref.: ID# 7051

cc: Mr. Daniel J. Nicholson
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