



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 11, 1989

Ms. Diane Callander
City of Georgetown
P. O. Box 409
Georgetown, Texas 78627-0409

Dear Ms. Callander:

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# 6829; this decision is OR89-243.

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 Georgetown Utility Office received a request for the home address of an individual customer who is employed by the city as a police officer who, as a public employee, made an election pursuant to section 3A(a) of the Open Records Act to withhold his home address and telephone number from public access. The city holds home address information in two separate departments of its operations: in the records of its utility customers as a retailer of utility service and in the personnel files of its employees as a public employer. The city seeks to withhold the requested information from required disclosure under sections 3(a)(17) and 3A(a) of the open records act.

Section 3(a)(17) protects the home addresses and telephone numbers of "peace officers as defined by Article 2.12, Code of Criminal Procedure . . . or by Section 51.212, Texas Education Code." Unlike non-peace officer public

Ms. Diane Callander
August 11, 1989
Page 2

employees, a peace officer need not affirmatively claim confidentiality for this information. In Open Records Decision No. 516 (1989), a copy of which is enclosed with this letter ruling, we held that section 3(a)(17) protects a peace officer's home address and telephone number from public disclosure, but not from confidential, inter-agency transfer. The confidential nature of the information does not change simply because it is held by various agencies or different departments of a governmental body. You should therefore withhold the information from the requestor.

A similar rationale applies to city employees who are not peace officers. While customer account information held by a public utility has been held to be public information that is subject to disclosure, unless special circumstances are shown by the governmental body that the information should not be disclosed. See, e.g., Open Records Decision Nos. 443 (1986); 63 (1974); 51 (1974), the home address and telephone number of a public employee is specifically excepted from public disclosure by section 3(a)(17) of the act, except as provided by section 3A(a). Pursuant to section 3A(a), public employees have a special right to choose whether or not to allow public access to information in the custody of the governmental body relating to the employee's home address and home telephone number. See V.T.C.S. art. 6252-17a, § 3A(a). The legislature added section 3A in 1985 in response to Open Records Decisions of the attorney general that public employees' home addresses and telephone numbers are not ordinarily protected under the privacy exceptions. See Open Records Decision Nos. 169 (1977); 123 (1976). The purpose of the section is to protect government employees from being harassed while at home. In Open Records Decision No. 455 (1987), the attorney general concluded that if a government employee elects to protect his home address and telephone number from disclosure, the governmental body may not disclose the information during the employment relationship or after the employment relationship ends.

Most public employees are also utility customers. The specific right of a public employee to elect to have information about his home address withheld from public disclosure overrides the more general public right to such information when it is held by a public utility. To decide otherwise would render the protection of sections 3(a)(17) and 3A(a) meaningless. Therefore, if a city employee has made a non-disclosure election concerning his home address and telephone number pursuant to section 3A(a), then such information is not public and may not be disclosed, even if it is held by the city's utility department and would, but

Ms. Diane Callander
August 11, 1989
Page 3

for the non-disclosure election, have been public under our prior decisions.

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 OR89-243.

Yours very truly,

Open Government Section 
of the Opinion Committee
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of the Opinion Committee
Prepared by David A. Newton
Assistant Attorney General

DAN/bc

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