



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 15, 1989

Mr. Jesus Toscano, Jr.
Assistant City Attorney
Office of the City Attorney
City Hall
Dallas, Texas 75201

Dear Mr. Toscano:

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# 7123; this decision is OR89-250.

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 Dallas Police Department (DPD) received an open records request for a copy of DPD's Crimes Against Persons Section investigation of the shooting of a citizen by a Dallas police officer. You state that the requestor already received a copy of the criminal offense report of the shooting. You contend, however, that the remainder of the investigative file should be withheld pursuant to section 3(a)(1) of the Open Records Act, which protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

Although the police officer who is the subject of the investigation was no-billed by the Dallas County Grand Jury, a current internal investigation by the DPD may result in disciplinary action, including termination of employment or loss of benefits. You contend that because the officer has

Mr. Jesus Toscano, Jr.
August 15, 1989
Page 2

a Constitutional interest in his employment, the release of the requested information "may create outside pressures which could unduly influence those persons responsible for making recommendations on disciplining" the officer, thus potentially depriving the officer of his employment without due process of law. See generally Buxton v. City of Plant City, 871 F.2d 1037 (11th Cir. 1989).

Your argument is without merit. Civil and criminal evidence is introduced in open court everyday without the denial of due process. Even if the release of the information did result in outside pressures on those who make recommendations on discipline, such a situation would not cause the investigative file itself to be privileged. Although due process might require a hearing on the substance of the investigation, see Buxton, supra, this fact would not make the file confidential. You have raised none of the act's other exceptions to required public disclosure; you must, therefore, release the file in its entirety.

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 OR89-250.

Yours very truly,

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

JSR/RWP/bc

Ref.: 7123

cc: Mr. Todd Copilevitz
Staff Writer
The Dallas Morning News
Communications Center
Dallas, Texas 75265