THE ATTORNEY GENERAL
OF TEXAS

August 17, 1989

JIM MATTOX
ATTORNEY GENERAL

Honorable Noble Suggs
Office of the Mayor
P. O. Box 356
Bishop, Texas 78343

Mr. C. L. Wright, III
Wood, Burney, Cohn & Bradley
Attorneys for City of Bishop
P. O. Box 2487
Corpus Christi, Texas 78403

Dear Mr. Suggs and Mr. Wright:

This will acknowledge receipt of a letter from Mr. C. L. Wright, attorney for the City of Bishop, dated April 20, 1989, requesting an Open Records Decision from this office. That letter and supporting documents have been designated ID# 6235. This informal letter ruling is OR89-262.

The City of Bishop received a request for copies of complaints filed against the Bishop Police Department, including the Chief of Police and another named officer. On behalf of the City, Mr. Wright contends that the city police department does not possess such information. In a telephone conversation with this office, Mr. Wright contended that complaints filed against the Bishop Police Department may be in the possession of another branch of city government, presumably Bishop City Hall, and that the police department has no agency relationship with city hall. Mr. Wright provided for our review representative copies of police complaint forms used to log daily telephone calls made to the police department relating to reports of suspected criminal activity. Mr. Wright claims that these complaint forms are protected from required public disclosure by section 3(a)(8) of the Open Records Act. However, copies of these complaint forms are not the information sought by the requestor.

Rather, the requestor seeks information concerning complaints or disciplinary action taken <u>against</u> members of the police department. The request for these complaints was made by the requestor on April 10, 1989, and was directed to the Bishop Police Department. We have not received a

request for an Open Records Decision from the City of Bishop regarding the information sought from the city by the requestor, i.e., for complaints or disciplinary reports about named police officers. Thus, the city has not made a timely request for an open records decision regarding this information.

Mr. Wright contends that the city police department does not maintain information regarding complaints against the police department, but that another agency or branch of city government may possess this information. The city claims, in essence, that the request was not directed to the proper custodian of records.

The purpose of the Open Records Act is to make available to the public full and complete information regarding the affairs of government. Section 7(a) of the act provides:

> If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information. (Emphasis added.)

Section 5(b) of the act contemplates the probability that an agent, or in this case another subdivision of city government, not necessarily the "custodian," may receive requests for public information. When a request has been directed to an employee within a governmental structure, the request may not be ignored simply because it was not directed to the legal custodian of the records. See Open Records Decision Nos. 497 (1988); 44 (1974).

The Bishop Police Department is a branch of city government, as is Bishop City Hall. "Misdirected" requests for public information within a governmental structure must be transferred to the proper custodian of the information. Once a governmental body receives a request for public information, it is bound to follow the procedural dictates of section 7(a). The fact that a request for the complaints and disciplinary reports against the police department may have been directed to the police department rather than to

another branch of the governmental body that actually holds the records cannot be used to circumvent the request.

The effect of a governmental body's failure to comply with Section 7(a) is to create an added presumption that the information in question is public. A governmental body must show a compelling interest to overcome the presumption. Open Records Decision No. 319 (1982). This office did not receive a request for an Open Records Decision from the City of Bishop concerning the information sought within 10 days after the city's receipt of the request. Rather, the city's request for an open records decision concerned information unrelated to the request the city received. Therefore, the city has not made the requisite showing to rebut the presumption created under section 7(a) and has failed to make a timely request for an open records decision concerning the information sought. All information concerning complaints filed against the police department must be released, regardless of which branch of the city holds the information.

If the City of Bishop does not possess such information, you must submit to this office an affidavit specifically stating this fact within 10 days of receipt of this ruling. We do not address whether section 3(a)(8) of the act applies to the information for which you have submitted representative copies, which is clearly not the information sought.

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 OR89-262.

Yours very truly,

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

DAN/FAF/bc

Ref.: ID# 6235

cc: Mr. Archie Contreras
410 West Fifth
Bishop, Texas 78343