



**THE ATTORNEY GENERAL
OF TEXAS**

August 25, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Ms. Cathy M. Barnes
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

Dear Ms. Barnes:

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# 6745; this decision is OR89-278.

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 El Paso received an open records request for, inter alia, copies of complaints received by the City-County Health District about the Rio Bravo Association, the association's director, or both. You indicate that the city has released some of the requested complaints; you seek, however, to withhold one particular complaint, claiming the protection of section 3(a)(1) of the Open Records Act.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common-law right to privacy. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977). Texas courts recognize four categories of common-law privacy, including "false light in the public eye" privacy. Information must be withheld pursuant to false-light privacy, only if its release would be highly offensive to a reasonable person, the public interest in

Ms. Cathy Barnes
August 25, 1989
Page 2

disclosure is minimal, and there serious doubt exists about the truth of the information. Open Records Decision No. 308 (1982).

Although the complaint letter contains highly offensive allegations against the executive director of the Rio Bravo Association, if the accusations contained in the letter were true, it could not be said that all of the letter's contents would be outside the realm of legitimate public interest. We note, however, that the author of the complaint letter subsequently submitted another letter to the Health District, recanting all of the allegations he previously made, claiming that he "felt compelled" by other individuals to make the false accusations for various reasons. In light of this subsequent letter, this office believes that the original complaint letter should be withheld from the public in its entirety pursuant to the false-light privacy aspect of section 3(a)(1).

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 OR89-278.

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.: ID# 6745

cc: Mr. Vic Kolenc
Reporter
El Paso Herald-Post
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