



**THE ATTORNEY GENERAL  
OF TEXAS**

August 28, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. Robert P. Rose  
Assistant City Attorney  
Police Legal Advisor  
City of Austin  
715 East 8th Street  
Austin, Texas 78701-3397

Dear Mr. Rose:

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# 6685; this decision is OR89-285.

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 Austin Police Department received an open records request for a particular offense report of an armed robbery of a savings and loan association and for photographs that were taken during the robbery. You contend that subsections 3(a)(1) and (a)(8) of the Open Records Act protect this information from required public disclosure because the requested information identifies the witnesses in the case.

By raising section 3(a)(1) in this instance, this office assumes that you intend to invoke the informer's privilege aspect of section 3(a)(1). The informer's privilege protects the identities of individuals who report the violation of a criminal or civil statute. See Open Records Decision No. 515 (1988). Section 3(a)(8), known as the "law enforcement" exception, also excepts from required public disclosure the identity and description of witnesses, Open Records Decision No. 127 (1976), but only if the release of that information would "unduly interfere" with law enforcement or prosecution. Open Records Decision No. 434 (1986). Witness statements may be withheld pursuant to sections

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3(a)(1) or 3(a)(8) only to the extent that the statements tend to reveal the witness's identity.

Two reasons for withholding names of witnesses after a criminal investigation has been closed are that disclosure might either (1) subject the witnesses to intimidation or harassment from criminal suspects or (2) harm the prospects of future cooperation between witnesses and law enforcement authorities. Open Records Decision No. 252 (1980). Where it is apparent from an examination of the facts of a particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers, the names and statements of witnesses may be withheld. Id.

Because of the inherently violent nature of armed robbery, this office believes that the names of civilian witnesses contained in the offense report may be withheld pursuant to subsections 3(a)(1) and (a)(8). We note, however, that because part of the purpose of the informer's privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the party complained of. See Open Records Decision No. 208 (1978). Consequently, you may not withhold the name of any witness who testified in open court. For similar reasons, you may not withhold the photographs depicting the robbery itself, because the robbers saw the witnesses' at the time of the robbery and presumably know where the witnesses work.

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 OR89-285.

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/bc

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Ref.: ID# 6685