



**THE ATTORNEY GENERAL
OF TEXAS**

September 12, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. J. C. Elliott
Chief of Police
City of El Campo
303 East Jackson
El Campo, Texas 77437

Dear Mr. Elliott:

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# 7272; this decision is OR89-288.

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 El Campo Police Department received an open records request for records relating to a U.S. Justice Department investigation of an alleged civil rights violation by two of the city's police officers. You have submitted to this office for review records of an internal affairs investigation of the incident and inquire whether the investigative file must be released to the public.

You raise none of the act's specific exceptions to required public disclosure. Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, see Open Records Decision No. 455 (1987), this office will raise section 3(a)(1) because the act prohibits the release of confidential information and because its improper release constitutes a misdemeanor. See V.T.C.S. art. 6252-17a, § 10(e). Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

Section 3(a)(1) protects 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). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. Id. at 683-85. Although an allegation that police officers violated an individual's civil rights may be highly embarrassing to the police officers involved, the public has a legitimate interest in the manner in which police officers perform their duties and the manner in which the performance of those duties are evaluated. See Open Records Decision No. 208 (1978). The contents of the file do not meet the tests for common-law privacy. The file must be released 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 OR89-288.

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

cc: Ms. Lorraine Adams
Staff Writer
The Dallas Morning News
Communications Center
Dallas, Texas 75265

Ref.: ID# 7372