



**THE ATTORNEY GENERAL  
OF TEXAS**

September 12, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. Rob Ramsey  
City Attorney  
City of Wharton  
101 W. Burleson  
Wharton, Texas 77488

Dear Mr. Ramsey:

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# 7351; this decision is OR89-289.

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 Wharton received an open records request for an "apology letter" received by one of the city's police officers from the city's then-chief of police. You contend that sections 3(a)(8) and 3(a)(11) of the Open Records Act protect this letter from required public disclosure.

Section 3(a)(8) excepts from required public disclosure "records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime," but only if their release would "unduly interfere" with law enforcement or prosecution. Open Records Decision No. 434 (1986), at 2. Section 3(a)(8) clearly does not apply to the letter in question.

Section 3(a)(11) of the act excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's deliberative process. Open Records Decision No. 464 (1987). The letter in question does not contain the type of advice or opinion that section

Mr. Rob Ramsey  
September 12, 1989  
Page 2

3(a)(11) was intended to protect. See generally Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.). The letter must therefore 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 OR89-289.

Yours very truly,

*Open Government Section  
of the Opinion Committee*

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

JSR/RWP/bc

cc: Mr. Ronald K. Sanders  
News Editor  
Wharton Journal Spectator  
P. O. Box 111  
Wharton, Texas 77488

Ref.: ID# 7351