



**THE ATTORNEY GENERAL
OF TEXAS**

September 12, 1989

**JIM MATTOX
ATTORNEY GENERAL**

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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# 7349; this decision is OR89-291.

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 Corsicana Police Department received an open records request for records relating to a U.S. Justice Department investigation of an alleged civil rights violation by one 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 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 a criminal allegation of violating an individual's civil rights may be highly embarrassing to the police officer 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.

We note, however, that the file contains references to a polygraph examination that was conducted during the investigation. Section 19A of article 4413(29cc), V.T.C.S., authorizes the disclosure of the results of such examinations only to specified individuals; it does not allow access to those currently requesting the file. Consequently, the department is barred by statute from releasing the results of the polygraph examination to the requestors. See also Open Records Decision No. 430 (1985). The remaining portions of the file must, however, be released.

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 OR89-291.

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

Mr. Douglas D. Fletcher
September 11, 1989
Page 3

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