



**THE ATTORNEY GENERAL
OF TEXAS**

September 12, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Mark D. Kimball
Assistant County Attorney
Bell County, Texas
P. O. Box 1127
Belton, Texas 76513

Dear Mr. Kimball:

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# 7352; this decision is OR89-293.

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 Bell County Attorney received an open records request from a criminal defendant for the offense report pertaining to the defendant's arrest and subsequent trial. Contained in the report are the identity and address of the complainant and witnesses, date of the offense, name of the investigating officer, and a narrative detailed description of the offense.

You contend that the offense report comes under the protection of section 3(a)(8) of the Open Records Act. Section 3(a)(8), known as the "law enforcement" exception, excepts from required public disclosure "records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime" Whether this exception applies to particular records depends on whether their release would "unduly interfere" with law enforcement or prosecution. Open Records Decision No. 434

(1986) at 2; see Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).

You argue that the offense report should not be released to the defendant/requestor pursuant to the Open Records Act because, citing Brem v. State, 571 S.W.2d 314, (Tex. Crim. App. 1978), the report is not discoverable pursuant to article 39.14 of the Code of Criminal Procedure. You do not state, however, whether the requestor sought the offense report during discovery proceedings and whether such discovery request was denied or is the subject of a protective order. This ruling does not address, however, whether the offense report in question is subject to discovery, but only whether it is a public record pursuant to the Open Records Act.

In Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976), the court of civil appeals established the guidelines on what constitutes public information contained in police offense reports. The court's holding was summarized in Open Records Decision No. 127 (1976), a review of which indicates that the detailed description of the offense, the time and place that the offense occurred, and the identities of the complainant and investigating officer are public information.

Law enforcement agencies may elect not to disclose this type of information only if the department demonstrates that the release of information would unduly interfere with crime prevention efforts. Open Records Decision No. 409 (1984). Whether disclosure of particular records will unduly interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981).

You have not demonstrated how the release of the report would unduly interfere with the prosecution of this case. The identities and statements of witnesses may, however, be withheld, but only to the extent that the requestor has not been made aware of this information, e.g., through discovery or in-court testimony. Cf. Open Records Decision No. 349 (1982) (no section 3(a)(3) interest exists with respect to information already obtained by all parties to the litigation). The remainder of the offense report is public and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter

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with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-293.

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

Ref.: ID# 7352