



**THE ATTORNEY GENERAL
OF TEXAS**

September 21, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. William Grossenbacher
Administrator
Texas Employment Commission
T.E.C. Building
Austin, Texas 78778

Dear Mr. Grossenbacher:

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# 7258; this decision is OR89-303.

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 Texas Employment Commission (TEC) received a request to conduct a tax liability audit on a particular business. The purpose of this type of audit is to determine whether an employer is required to make periodic unemployment tax contributions to the TEC pursuant to article 5221b-5, V.T.C.S. The TEC subsequently received an open records request from the employer who is the subject of the audit seeking the identity of the person who requested that the TEC conduct the audit. You contend that the identity of a person who requests TEC to conduct such an audit is in essence reporting a possible violation of article 5221b-5, and that the person's identity should be withheld pursuant to the informer's privilege aspect of section 3(a)(1) of the Open Records Act.

Open Records Decision No. 279 (1981) governs your request. In this instance, the informer's privilege protects the identities of individuals who notify the TEC of

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possible violations of the Texas Unemployment Compensation Act because (1) the TEC has an official duty to conduct the tax liability audits, see V.T.C.S. art. 5221b-9, and (2) violations of that act carry criminal penalties, see V.T.C.S. art. 5221b-14. See also Open Records Decision No. 515 (1988). You may, therefore, withhold the informant's identity pursuant to the informer's privilege.

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 OR89-303.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee
Prepared by Jennifer S. Riggs
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JSR/RWP/bc

cc: Mr. Roger Jones
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Ref.: ID# 7258