



**THE ATTORNEY GENERAL  
OF TEXAS**

October 2, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. Paul G. Stuckle  
Police Legal Advisor  
Assistant City Attorney  
Fort Worth Police Department  
350 W. Belknap Street  
Fort Worth, Texas 76102

Dear Mr. Stuckle:

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# 6592; this decision is OR89-322.

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 Fort Worth received an open records request from an inmate for copies of two specified offense reports of crimes involving him. The requestor seeks information typically found in offense reports and criminal files. The city's police department seeks to withhold from required public disclosure only the names, addresses and other identifying information or (descriptions) of the complainants and or informants/witnesses found in the reports. The police department claims this information is protected from required public disclosure under sections 3(a)(1), 3(a)(3) and 3(a)(8) of the Open Records Act.

The city claims that section 3(a)(1), which includes the informer's privilege, protects the identities of complainants and witnesses. Because part of the informer's privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the party complained of. See Open Records Decision

No. 208 (1978). Thus, the identities of complainants who may have appeared to offer testimony in open court are not protected by the informer's privilege as incorporated into section 3(a)(1). You must release offense reports that merely identify the complainant and the offense. The identities and descriptions of witnesses are, however, protected from disclosure under the Open Records Act. This does not mean, however, that a criminal defendant does not have any other right of access, such as a due process right, to the information.

The city claims that section 3(a)(3) protects the information because the requestor is an inmate who has not exhausted his appellate and post-conviction remedies, and that there is therefore a reasonable likelihood of future litigation. Section 3(a)(3) cannot be used to circumvent a criminal defendant's due process or common-law rights of access to inspect criminal records about himself. See Attorney General Opinion MW-95 (1979). Thus section 3(a)(3) does not protect the information at issue here.

The city claims that section 3(a)(8) protects the information as records of a law enforcement agency, one of the duties of which is to protect confidential informants and police contacts/witnesses. Section 3(a)(8), the law enforcement exception, excepts from disclosure information that would unduly interfere with law enforcement and crime prevention. You have made no showing of specifically how and why the information sought to be excepted would unduly interfere with law enforcement and crime prevention efforts. The persons whose identities you seek to withhold are not confidential police informants who provide continuing assistance to the police on crime prevention, but complainants in an adjudicated case. This section protects law enforcement and crime prevention efforts by allowing government bodies to withhold law enforcement records if their releases would unduly interfere with law enforcement or prosecution, e.g., by allowing suspects and criminals to use such records to evade detection and capture. See Open Records Decision No. 434 (1986). In Houston Chronicle Publishing Company 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 controlling case with regard to the availability of arrest related information, it was held that the identification and description of a complainant is information that is available to the public. See Open Records Decision No. 127 (1976). The information here does not fall within the protection of section 3(a)(8). It must be released.

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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 OR89-322.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee*   
Open Government Section  
of the Opinion Committee  
Prepared by David A. Newton  
Assistant Attorney General

DAN/bc

Ref.: ID# 6592