



**THE ATTORNEY GENERAL
OF TEXAS**

October 10, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Ms. J. Sage White
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

Dear Ms. White:

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# 7094; this decision is OR89-326.

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 Austin received a request for documents in the personnel file of a city peace officer who is a former city employee currently under indictment for the sexual assault of a child. The requestor is representing the former employee in an administrative grievance hearing, and presented written authorization granting the requestor "complete access" to the former employee's personnel file. The city released most of the the file, but seeks to withhold from disclosure the offense report with supplements and a witness statement of the victim of the alleged offense. The city seeks to withhold these documents under section 3(a)(3) of the Open Records Act.

Section 3(a)(3), known as the litigation exception, excepts from required public disclosure

information relating to litigation of a criminal or civil nature and settlement

negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

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 held that certain information in police files constitutes public information, including, inter alia, the first page of the offense report, the details of the arrest, the detailed description of the offense, and identification and description of complainant. See Open Records Decision No. 127 (1976). Such information is no less available to the indicted former employee when it is held in his personnel file.

Moreover, section 3(a)(3) cannot be used to prevent access by a suspect to criminal records involving him, nor to prevent access to that information by a duly authorized agent or representative of the person charged. See Attorney General Opinion MW-95 (1979). Section 3(a)(3) is not a shield to any common-law or due process right the former employee has to obtain the information at issue. The offense report, supplements and witness statements cannot be withheld from the indicted former employee or from his authorized representative under section 3(a)(3).

However, we have previously held that information regarding the sexual abuse of a child is protected from required public disclosure under section 3(a)(1), which protects information deemed confidential by law, including statute and judicial decision. Under common-law privacy principles incorporated in section 3(a)(1), the description of incidents of sexual abuse and the names of victims of serious sexual offenses are protected by the common-law right to privacy. See Open Records Decision Nos. 440 (1986); 393 (1983); 339 (1982). In Open Records Decision No. 393 this office specifically held that a police report regarding the sexual abuse of a child is excepted from public disclosure under the common-law right of privacy as incorporated by section 3(a)(1). See also Open Records Decision No. 339 (1982). Therefore, although the information may be released to the person whom the records concern

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under a common-law right of access, it may not be released to the general public.

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 OR89-326.

Yours very truly,

Open Government Section 
of the Opinion Committee

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of the Opinion Committee
Prepared by David A. Newton
Assistant Attorney General

DAN/bc

Ref.: ID# 7094

See also 89-199 enclosed.