



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

October 30, 1989

Ms. Susan T. Taylor  
Senior Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

Dear Ms. Taylor:

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# 5989; this decision is OR89-351.

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 Houston Police Department received a request for a copy of the department's policy, rule or guidelines for investigating motor vehicle accidents involving fatalities. You have submitted the department's Accident Division Standard Operating Procedures (SOP) and ask whether they are excepted from public disclosure by section 3(a)(8) of the Open Records Act. The first SOP at issue ("Policy on Investigating Accidents") describes the circumstances under which an officer will be dispatched to an accident and describes the circumstances under which an investigation will be conducted. The second SOP at issue ("Outline for Investigating Accidents") simply describes the information an officer must remember to obtain. The third SOP at issue ("Major Accident") describes the procedure to follow, e.g. notifying the dispatcher, and the information to obtain when a major accident occurs.

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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 and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

The purpose for this exception is clear. If a law enforcement agency's internal law enforcement and crime prevention techniques were readily available to the public, those techniques could be rendered ineffective. Release of certain law enforcement information would enable suspects and criminals to evade detection and capture more easily. See Open Records Decision Nos. 133, 127 (1976). The circumstances surrounding the collection and use of particular information determine whether section 3(a)(8) protects it. A case-by-case approach applies. Information may be withheld if its release would "unduly interfere with law enforcement and crime prevention." See Ex Parte Pruitt, 551 S.W.2d 706, 709 (Tex. 1977).

Your letter requesting a decision notes that Open Records Decision No. 127 (1976) authorized withholding confidential law enforcement techniques. In Open Records Decision No. 531 (1989), this office stated:

Section 3(a)(8) of the Open Records Act authorizes [a law enforcement agency] to withhold the portions of its 'Use of Force' procedures prepared for its officers that state detailed guidelines on the use of force. The portions of the procedures which restate generally known common-law rules, constitutional limitations, or Penal Code provisions are open to the public. (Emphasis added.)

The primary concern addressed in that decision was that release of detailed procedures regarding the use of force could endanger the lives of peace officers or otherwise impede law enforcement efforts.

The information you submit for review differs significantly from that addressed in Open Records Decision No. 531. It is not clear that its release would affect law enforcement. As indicated, the primary purpose of section 3(a)(8) is to protect crime prevention efforts. See Ex parte Pruitt, supra; 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). Some motor vehicle accidents involve criminal offenses. See e.g., V.T.C.S. arts. 6701d, §§ 39, 40 (failure to stop, give information, or render aid) 67011-1 (driving while intoxicated); Penal Code § 19.05 (involuntary manslaughter). The procedures describe the kind of evidence that should be gathered and preserved, but do not include information that would assist violators in evading arrest and accountability for criminal offenses. Since these are accidents, and generally not intentional acts, violators would have little opportunity for premeditated evasion of detection. You do not demonstrate how release of the standard operating procedure regarding motor vehicle accidents would "unduly interfere" with law enforcement and crime prevention. Consequently, it must be released.

Finally, please note that section 6 of the Open Records Act specifically makes public the following information:

(10) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency;

(11) each amendment, revisions, or repeal of 7, 8, 9 and 10 above;

. . . .

(13) statements of policy and interpretations which have been adopted by the agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public.

Although these provisions do not override section 3(a)(8), they must be considered.

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In Open Records Decision No. 514 (1988), this office stated:

The list of information expressly deemed public in section 6 does not override the act's exceptions to disclosure. Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177, 185 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 599 (Tex. 1976); Open Records Decision Nos. 280 (1981); 233 (1980). On the other hand, the legislature did not intend the section 6 enumeration to be totally meaningless. . . . At the least, it heightens a governmental body's burden under the act of showing which exceptions apply and why. . . . Open Records Decision Nos. 395 (1983); 208 (1978).

As indicated, you have not shown how release of the information at issue would unduly interfere with law enforcement and crime prevention.

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 OR89-351.

Yours very truly,  
*Open Government Section*  
*of the Opinion Committee*   
Open Government Section  
of the Opinion Committee  
Prepared by Jennifer S. Riggs  
Chief, Open Government Section

JSR/le

Ref.: ID# 5989  
ID# 5990

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