



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

October 31, 1989

Mr. Luke L. Daniel
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

Dear Mr. Daniel:

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# 5730; this decision is OR89-357.

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. Attorney General Opinion H-436 (1974). The act does not require this office to raise and consider exceptions that you have not raised.

You ask whether the amount of monthly or yearly retirement benefit payments made to persons receiving benefits from the city's pension fund is confidential information under sections 3(a)(1) or 3(a)(2) of the Open Records Act.

Section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act. Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.). Section 3(a)(1) of the Open Records Act protects from required public disclosure:

information deemed confidential by law,
either Constitutional, statutory, or by
judicial decision.

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Although this exception covers a broad range of information, its primary purpose is to protect privacy interests.

The Texas Supreme Court in Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668, 682 (Tex. 1976), cert. denied, 430 U.S. 930 (1977), set forth the primary test for "the public disclosure of private facts" privacy protection applicable under section 3(a)(1). Information may be withheld under section 3(a)(1) only if the information contains highly intimate or embarrassing, facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. See Id. at 683-85.

Information concerning the amount of a former public employee's retirement benefits does not ordinarily satisfy this test. Past open records decisions have determined that the name, address and social security number of a public employee are public information, Open Records Decision No. 169 (1977) that the salary or wages received by a public employee is public information, Open Records Decision Nos. 139, 132 (1976); 59, 41, 37, 20, 14 (1974) and that disability payments are public information, Open Records Decision No. 298 (1981). Section 6(2) of the act provides that the name, salary, title, and dates of employment of employees are public information. Section 6(3) provides that any information in any account, voucher, or contract dealing with the receipt or expenditure of public funds is public unless otherwise made confidential by law.

In Calvert v. Employees Retirement Sys., 648 S.W.2d 418 (Tex. App. - Austin 1983, writ ref'd n.r.e.), the court held that the confidentiality of retirement records under articles 6228a and 6228k, V.T.C.S., was governed by section 3(a)(2) of the Open Records Act. Id. at 421. Section 3(a)(2) does not protect more information than that protected by section 3(a)(1). Hubert v. Harte-Hanks Texas Newspapers, Inc., supra at 550. The court in Calvert held that section 3(a)(2) of the act required disclosure of information in the retirement records. 648 S.W.2d at 421.

In Open Records Decision No. 471 (1987), this office held that sections 13.402 and 25.503 of Title 110B were substantially the same as articles 6228a and 6228k, and that the reasoning in Calvert applied to the construction of sections 13.402 and 25.503.

Although the amount of benefits made to persons receiving benefits from the city's fund could be considered

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to be intimate facts, there exists a legitimate public interest in knowing how public funds are being expended. For these reasons, information concerning the amount of retirement benefits received should be made available to the 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 OR89-357.

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# 5730