



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

November 2, 1989

Mr. Michael Anthony Moss  
Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

Dear Mr. Moss:

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# 7264; this decision is OR89-358.

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 Houston Police Department received a request for

any and all policies, standards, procedures, and training requirements for all Houston Police Department Officers in regard to the handling, use of, security of, and storage of any and all firearms while either on or off duty.

The city submitted two administrative orders for review; its "Property Control Regulations" and its order on "Firearms Qualification and Control." The city contends that section 3(a)(8) protects these two orders from required public disclosure.

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) (emphasis added).

You suggest that section 3(a)(8) should be read broadly to authorize withholding virtually all of the department's internal policies and procedures. This is not the case. Section 14(d) of the Open Records Act requires that the act "be liberally construed in favor of the granting of any request for information." Consequently, the act's exceptions are to be construed narrowly.

In Open Records Decision No. 531 (1989), this office stated that

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.)

See also Open Records Decision Nos. 421 (1984) (may withhold specific law enforcement techniques); 127 (1976) (may withhold confidential investigative techniques and procedures).

The documents at issue here, however, differ from those at issue in Open Records Decision Nos. 531, 421, and 127.

The administrative orders at issue here do not detail law enforcement and crime prevention techniques; they state department procedures for holding seized property, including seized firearms, and department standards for officer qualifications for and limits on carrying weapons. They do not detail how officers will seize property or use their weapons

in law enforcement. You do not demonstrate how release of this information would unduly interfere with law enforcement and crime prevention.

Only the information listed under "Ammunition" and some of the information listed under "Approved Duty-Weapons" in the order on "Firearms Qualification and Control" clearly could unduly impede law enforcement efforts. Release of that information could endanger the lives of officers. Marked copies of the information that may be withheld are enclosed. In its request letter, the city asserts that peace officers are facing criminals with more sophisticated and deadly weapons. For this reason, we agree that release of specific information about the weapons actually carried by officers could unduly interfere with law enforcement. Release of the minimum caliber that an officer must carry does not, however, place the officer in danger because it does not inform potential offenders of the weapons actually carried, which could be of much higher caliber and of more sophistication. Further, release of the minimum caliber weapons that may be used by officers not in uniform has the added factor that such officers presumably are not easily identified in the first place. Section 3(a)(8) does not apply to the remainder of the information.

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

(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.

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

Mr. Michael Anthony Moss  
November 2, 1989  
Page 4

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. . . . see also Open Records Decision  
Nos. 395 (1983); 208 (1978).

As indicated, you do not show 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 OR89-358.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee*

Open Government Section  
of the Opinion Committee  
Prepared by Jennifer S. Riggs  
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JSR/bc

Ref.: ID# 7264

Enclosure: Marked Documents

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