



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

November 9, 1989

Mr. Lloyd Garza  
City Attorney  
City of San Antonio  
P.O. Box 9066  
San Antonio, Texas 78285

Dear Mr. Garza:

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# 6134; this decision is OR89-362.

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. Attorney General Opinion H-436 (1974). 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 San Antonio received an open records request for certain documents pertaining to Internal Affairs investigations of complaints filed against two San Antonio police officers. Because it was concluded that the charges raised against the officers were "unfounded" and "inconclusive," you contend that all records generated as a result of the investigation, including copies of the original complaints and statements of the parties involved, are excepted from required public disclosure pursuant to the "false light" privacy aspect of section 3(a)(1) of the Open Records Act. You also contend that some of the requested documents come under the protection of section 3(a)(11).

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Information is excepted from required public disclosure under section 3(a)(1) on the basis of "false light" privacy only if 1) release of the information would be highly offensive to a reasonable person, 2) serious doubt exists about the truth of the information, and 3) public interest in disclosure is minimal. Open Records Decision No. 438 (1986). This is not a balancing test; each of these tests must be met. Open Records Decision No. 400 (1983). The information at issue here concerns police officers' job performance; it cannot be said that the information relates to the officers' "private" affairs and is thus outside the realm of legitimate public concern. Open Records Decision No. 438 governs your request with regard to section 3(a)(1); this information is not excepted from disclosure under the doctrine of false light privacy.

Section 3(a)(11) of the act excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain sensitive advice, opinion, or recommendation intended for use in the entity's policy-making/deliberative process. Open Records Decision No. 464 (1987). The purpose of this section is "to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes." Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.) (emphasis added). Section 3(a)(11) is intended to protect the "executive" or high-level decision-making process. See Attorney General Opinion H-436 (1974). The "opinions" contained in Exhibit E are not the type of information that comes under the protection of section 3(a)(11); consequently, the requested information must be released in its entirety.

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 OR89-362.

Yours very truly,

*Open Government Section  
of the Opinion Committee*

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Approved by David A. Newton  
Assistant Attorney General

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