



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

November 9, 1989

Mr. Paul G. Stuckle
Assistant City Attorney
Fort Worth Police Department
350 W. Belknap Street
Fort Worth, Texas 76102

Dear Mr. Stuckle::

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# 7650; this decision is OR89-363.

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 Fort Worth received an open records request for records relating to several United States Department of Justice investigations of alleged criminal civil rights violations by Fort Worth police officers. Although initially unable to identify the specific documents pertaining to the federal investigations, you eventually located and submitted to this office the requested files as well as video and audio tape recordings, all of which you contend come within the protection of section 3(a)(1), (a)(2), (a)(3), (a)(8), and (a)(11) of the Open Records Act. When the requested records were submitted, you asked for a "reasonable amount of time" to review the records and to prepare a legal brief outlining the city's contentions regarding the file.

More than a month has expired since the time this office received the requested documents, yet we have not received any arguments as to why the information should be withheld pursuant to the exceptions you raise. Your burden

Mr. Paul G. Stuckle
November 9, 1989
Page 2

under section 7(a) of the Open Records Act is to request a decision on whether specific information is within specific exceptions. A bare claim that an exception applies with no explanation of why it applies will not suffice. Attorney General Opinion H-436 (1974).

Further, in placing a time limit to produce records or to request a decision from the attorney general, the legislature recognized the value of timely production of documents and arguments as to why the information is excepted from public disclosure. Consequently, this office cannot rule that your request for a decision is timely or that your claims are valid. The requested information is therefore presumed to be public. You must now show compelling reasons why the information should not be released.

We note, however, that some of the information contained in the requested files is deemed confidential by law. Criminal history information obtained from criminal history information systems such as TCIC and NCIC are confidential and may not be released to the general public. Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177, 188 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). You must also withhold pursuant to section 3(a)(19) of the act the video tape of an interview with a person suspected of driving while intoxicated because the tape depicts the images of police officers. See Open Records Decision No. 502 (1988). Unless you demonstrate to this office within ten days of receipt of this letter compelling reasons why other information should not be released, the remaining portions of the requested files must be released in their 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 OR89-363.

Yours very truly,

*Open Government Section
of the Opinion Committee*
Open Government Section
of the Opinion Committee
Approved by David A. Newton
Assistant Attorney General

DAN/RWP/le

Mr. Paul G. Stuckle
November 9, 1989
Page 3

Ref.: ID# 7650
ID# 6838
ID# 6787

cc: Lorraine Adams
Staff Writer
The Dallas Morning News
Communications Center
Dallas, Texas 75265