



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

November 29, 1989

Mr. Lawrence F. Alwin, CPA
State Auditor
Office of the State Auditor
P.O. Box 12067
Austin, Texas 78711-2067

Dear Mr. Alwin:

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# 1339; this decision is OR89-411.

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.

Some time ago, the state auditor received a request for a complete copy of a letter provided to the State Auditor that alleged mismanagement of grant funds by the Howard County Junior College District and for any document resulting from investigation of the complaint. The letter, with the writer's name deleted, was released. The working papers of the state auditor were not. You assert that the informer's privilege aspect of section 3(a)(1) protects the identity of the individual who wrote the letter and that sections 3(a)(8), 3(a)(11), and 3(a)(16) protect the working papers.

Your claim regarding the name of the "informant" falls within a previous determination of this office, Open Records Decision No. 515 (1988), a copy of which is enclosed. The informer's privilege applies to individuals who report

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crimes or the violation of laws to officials charged with enforcing those laws when they would not be expected to testify as witnesses, and ordinarily, when they have been promised confidentiality. Although the state auditor clearly has occasion to rely on the statements of informants, the privilege does not apply here.

Your claim regarding working papers is also governed by a previous determination, Open Records Decision No. 424 (1984), a copy of which is enclosed. You may therefore withhold the working papers under section 3(a)(16) of the Open Records Act.

We note, however, that this conclusion does not govern whether the requestor would be entitled to access to the information under some law other than the Open Records Act. See, e.g., Attorney General Opinion H-626 (1975) (due process). We cannot resolve the claims of other rights of access under the Open Records Act.

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 OR89-411.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

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Ref.: ID# 1339

Enclosure: ORD-424 (1984)
ORD-515 (1988)

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