



THE ATTORNEY GENERAL
OF TEXAS

JEFF BLATTNER
ATTORNEY GENERAL

January 11, 1990

Honorable Jack G. Willingham
District Attorney
259th Judicial District
P.O. Box 507
Anson, Texas 79501

Dear Mr. Willingham:

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# 7793; this decision is OR89-021.

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 office of the District Attorney for the 259th Judicial District received an open records request from a reporter for a copy of the first page of the offense report in an aggravated sexual assault case. You inform us that there is no offense report as such, but you submitted to this office copies of information from the file on the case that you think is responsive to the request, including the indictment, state's announcement of ready, information for officers, state's attorney and grand jury, internal memorandum from the interview with the victim, a sworn statement from the victim, grand jury subpoenas, correspondence about the case, phone messages, the file folder, the letter requesting the information, and a letter from this office. You claim that you consider all of this information, except the indictment and the state's announcement of ready, to be excepted from required public

disclosure under sections 3(a)(3) and 3(a)(8) of the act. As to the indictment and the state's announcement of ready, you indicate that these documents were not requested from you, and that in any case, they can be obtained from the District Clerk's office. Whether or not information is obtainable from another source, if a request is made to a governmental body for public information in its possession that is not excepted from public disclosure, the governmental body that receives the request must release the information. In this case, the request for information was made to your office and the information you have submitted may be reasonably considered responsive to the request in lieu of a copy of an offense report that does not exist. It is irrelevant that the information possessed by your office may be obtained elsewhere.

We have considered the exceptions you claimed and reviewed the documents at issue. Your request for an open records decision falls within previous determinations of this office. The victim's statement and notes of the interview with her by police staff may be withheld pursuant to Open Records Decision Nos. 339 (1982); 205 (1978) (copies enclosed). The grand jury subpoenas may be withheld pursuant to Open Records Decision No. 411 (1988) (copy enclosed).

Section 3(a)(8), the law enforcement exception, protects from required public disclosure information dealing with the detection, investigation and prosecution of crime. The phone message from Dennis Bahr about the case, the file folder, and the call sheet may be withheld as they contain information directly relating to the investigation of the case. See Open Records Decisions No. 350 (1982).

The names of witnesses may be withheld on the sheet entitled "Information For Officer's, State's Attorneys And Grand Jury." See Open Records Decision No. 127 (1976). None of the other information you have submitted is excepted from public disclosure under the exceptions you cite. Section 3(a)(3), the litigation exception, protects information related to litigation. Section 3(a)(3) does not apply, unless the information relates to the litigation in such a way that release of the information would adversely affect the governmental body's litigation interests. Open Records Decision No. 478 (1987). You have not shown how release of the remaining information you have submitted would adversely affect the litigation interests of your office, nor is it clear on the face of the documents how release of this information would have an adverse affect on any pending criminal litigation. You may not withhold this

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information under section 3(a)(3). With the exception of the information noted above in the preceding paragraphs, the information you have submitted as responsive to this request must therefore be released.

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 OR89-021.

Yours very truly,
*Open Government Section
of the Opinion Committee*

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of the Opinion Committee
Prepared by David A. Newton
Assistant Attorney General

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Enclosures: ORD's 411, 339, 205

Ref.: ID# 7793
ID# 7734

cc: Duane P. Schrag
Reporter
The Hutchinson News
P.O. Box 190
Hutchinson, Kansas 67504-0190