



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

January 30, 1990

Honorable Tom O'Connell
Criminal District Attorney
Collin County, Texas
Collin County Courthouse
McKinney, Texas 75069

Dear Mr. O'Connell:

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# 8376; this decision is OR90-44.

The Collin County Criminal District Attorney's Office received an open records request for all information pertaining to the shooting death of Mr. Michael Alan Cauffman. Although you initially contended that section 3(a)(3), (a)(7), and (a)(8) of the Open Records Act protect all of the requested information from required public disclosure, in a subsequent telephone conversation with one of our staff, you indicated that you have no objection to releasing the requested information at this time.

The Open Records Act does not require withholding all of the information protected by specific exceptions. Subsection 3(c) of the act provides, in part, that "the officer for public records may in any instance within his discretion make public any information protected under the exceptions contained within Section 3, Subsection (a) that is not deemed confidential by law." Similarly, subsection 14(a) provides that the "Act does not prohibit any governmental body from voluntarily making part or all of its records available to the public, unless expressly prohibited by law; provided that such records shall then be available to any person." (Emphasis added.) Subsection 10(a) of the act prohibits the release of "[i]nformation deemed confidential under the terms of this Act." The act thus makes a distinction between information that is simply excepted from disclosure and information that is deemed confidential by law.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Although other exceptions in section 3 protect information that may be deemed confidential, see, e.g., §§ 3(a)(2), 3(a)(3), 3(a)(7), 3(a)(9), 3(a)(10), 3(a)(14), 3(a)(17), 3(a)(18), section 3(a)(1) is the primary confidentiality provision. All of the information protected by other sections that include some confidentiality aspect is also protected by section 3(a)(1). None of the information that you submitted to this office comes under the protection of section 3(a)(1).

On the other hand, as indicated, many of the act's exceptions are discretionary, e.g., those exceptions that protect information that is not deemed confidential by law. The governmental body is usually in the best position to determine whether this protection is necessary. If it is not necessary, the governmental body will promote the act's purpose of giving the public complete information about governmental activities by releasing the information. You may therefore release the investigative file and all accompanying documents 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 OR90-44.

Yours very truly,



Open Government Section
of the Opinion Committee
Approved by Susan Garrison
Assistant Attorney General

RWP/le

Ref.: ID# 8376

cc: Larry Lecuyer
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