



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

May 1, 1990

Mr. Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy
1033 La Posada, Suite 340
Austin, Texas 78752-3892

OR90-165

Dear Mr. Bradley:

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# 9476.

You received a request for complaints about an individual who you state is not a licensee of the Texas State Board of Public Accountancy nor an applicant for licensure. You have located one complaint, but raise no exceptions under the Open Records Act about it.

You state that you do not believe the complaint is confidential under section 25 of the Public Accountancy Act of 1979, which provides that information about licensees and applicants for licensure in the possession of the board shall be confidential, with certain exceptions that are not relevant to this request. V.T.C.S. art. 41a-1, § 25. We agree that section 25 does not apply to this information.

You point out that section 8 of the act prohibits any person from using any title or designation indicating that the person is a Certified Public Accountant, unless that person holds a certificate or license under the act. A violation of this provision is a Class B misdemeanor. V.T.C.S. art. 41a-1, § 23(b). You do not raise the informer's privilege under section 3(a)(1) of the Open Records Act, but it would not be applicable in any case, because the name of the complainant and the circumstances of the complaint have been published in a newspaper article enclosed with your letter. See Open Records Decision No. 208 (1978) (informer's privilege not available when informant's name is known to the person complained of). The

fact that there is a misdemeanor penalty for violations of section 8 does not except the letter from disclosure.

Although exceptions not raised by a governmental body will ordinarily be deemed to be waived, the Attorney General does raise exceptions under section 3(a)(1) of the Open Records Act. Open Records Decision No. 325 (1982). The second paragraph of the letter could raise a question of false light privacy. See Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977); Open Records Decision No. 438 (1986). It contains no factual information about the subject of the letter but consists of the writer's expression of opinion. Accordingly, the board should determine whether release of the second paragraph would invade the subject's privacy by placing her in a false light. When it has made its determination, it should refer its conclusion to us. The rest of the letter must be released now.

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 OR90-165.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/le

Ref.: ID# 9476, 9429

Enclosure: Open Records Decision Nos. 208, 325, 438

cc: Kerry Haglund
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