



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

July 9, 1990

Ms. Martha C. Agee  
Assistant City Attorney  
City of Waco  
Legal Services Department  
P. O. Box 2570  
Waco, Texas 76702-2570

OR90-288

Dear Ms. Agee:

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# 9381.

The City of Waco (the city) received an open records request for a memorandum, written by a drug enforcement officer in 1987 to the city's then chief of police, concerning a police officer who allegedly had sold marijuana to a police informant. The city released to the requestor a copy of the memorandum with the name of the informant and others were redacted. The requestor subsequently sought an unexpurgated copy of the memorandum, containing the withheld names.

You contend that these names may be withheld pursuant to sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act. In this instance, we need not determine whether the requested information is excepted from disclosure. You state, however, that the requested memorandum has been misplaced and that the only other unaltered copy of this record is in the possession of the federal judge who heard the civil case against the city.

The Open Records Act does not require a governmental body to obtain information that is not in its possession. See Economic Opportunities Development Corp. v. Bustamante, 562 S.W.2d 266, 268 (Tex. Civ. App. - San Antonio 1978, writ dismissed); Open Records Decision No. 445 (1986). In this instance, if the memorandum is in fact lost, the city is not required under the Open Records Act to supply the missing names. See also Open Records Decision Nos. 452 (1986); 342 (1982). If the city locates the requested document, you may

make a subsequent request for an open records decision at that time.

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 OR90-288.

Yours very truly,



Jim Moellinger  
Assistant Attorney General  
Opinion Committee

JM/RWP/le

Ref.: ID#s 9381, 9512, 9968

cc: Steve De La Rosa  
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