



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

December 3, 1990

Mr. Jerry E. Drake, Jr.
Assistant City Attorney
City of Denton, Texas
Municipal Building
Denton, Texas 76201

OR90-570

Dear Mr. Drake:

You seek clarification of Open Records Letter Ruling OR90-319 in which this office decided that the employment records of an officer involved in a shooting incident were excepted from required disclosure based on section 3(a)(3) of the Open Records Act. Your letter has been designated ID# 10286.

You advise that since the issuance of that opinion, some of the requested materials have become the subject of a protective order, which prohibits their release to any person or entity. You inform us that not all of the documents submitted to our office as responsive to the open records request are covered by the order. You say that the individual who requested this information believes that this letter opinion authorizes unlimited public disclosure of all of the requested information, because some of the requested records have become available to the opposing party through discovery.

The purpose of section 3(a)(3) is to protect the governmental body's position in litigation by preventing the release of information relating thereto. Open Records Decision No. 288 (1981). The protection of section 3(a)(3) is no longer applicable to the particular items of information made available to the opposing party, through discovery or court order, because the purpose of the exception has been served. However, other exceptions to the release of this information may apply. Section 3(a)(3) is still applicable to the portion of the information that was not made available through discovery.

Section 3(a)(1) excepts from public disclosure "information deemed confidential by law, either Constitutional,

statutory or by judicial decision." We believe that the requested information which is included in the protective order is excepted from public disclosure pursuant to section 3(a)(1) as information deemed confidential by judicial decision. See Open Records Decision No. 349 (1982) (copy enclosed). Those documents not subject to the protective order still retain their 3(a)(3) protection as determined in Open Records Letter Ruling OR90-319.

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 OR90-570.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref: ID# 10286, OR90-319
