



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

September 20, 1991

Mr. Robert Morris  
Chief Civil Attorney for  
Denton County  
Denton County Commissioners Court  
110 West Hickory  
Denton, Texas 76201

OR91-428

Dear Mr. Morris:

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 most recent correspondence with this office was assigned ID# 13467.

The Denton County Sheriff's Department (the department) received an open records request for access to "the personnel records and any file" created during the background check of the requestor who had applied for a position with the department. We note at the outset that this office previously issued a letter stating that you had not provided us with copies of the documents and that this office would consequently close our file on this matter without issuing a ruling. We have since discovered, however, that a clerical mistake in our computer system failed to reflect that we had in fact received copies of the requested documents before our letter to you was mailed. This office will therefore treat your request as timely.

Under the Open Records Act, all information held by governmental bodies is open to the public unless it is within a specific exception to disclosure. The custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental body does not claim an exception or fails to show how it applies to the records, it will ordinarily waive the exception unless the information is deemed confidential by the act. See, a.g., Attorney General Opinion JM-672 (1987).

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You do not, however, explicitly raise any of the act's exceptions to required public disclosure. Instead, you state that the department

feels that the information on [the requestor] obtained from the Lake Dallas Police Department was obtained in confidence and that revealing the information or the source of information would violate the confidence and create problems in the future when unfavorable information is sought. They also are claiming that [the requestor] could use this information in a lawsuit and that the overall repercussion could hinder future background investigations.

Although we infer that you seek the protection of section 3(a)(3), the litigation exception, and possibly section 3(a)(8), the "law-enforcement" exception, you have in no way indicated how these exceptions apply to the information at issue. For example, you have not demonstrated that the likelihood of litigation regarding this matter is more than mere speculation. *See* Open Records Decision No. 331 (1982). Nor have you demonstrated that in this instance the release of the information would unduly interfere with law-enforcement efforts. *See* Open Records Decision No. 434 (1986). Consequently, you may not withhold the requested information pursuant to these two sections.

You are correct in asserting that section 3(a)(2), which protects certain information contained in personnel files, is inapplicable here because the requestor has never been an employee of the department.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision Nos. 455 (1987); 325 (1982), we will raise section 3(a)(1) because the release of confidential information could impair the rights of third parties and because its improper release constitutes a misdemeanor. *See* V.T.C.S. art. 6252-17a, § 10(e).

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common-law right of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate con-

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cern to the public. *Id.* at 683-85. For example, this office has held that information relating to one's credit history meets the common-law privacy test. Open Records Decision No. 481 (1987).

We note, however, that because all of the private information contained in these documents pertain solely to the requestor, he has a special right of access to this information pursuant to section 3B of the act. *See generally* Open Records Decision No. 565 (1990). Consequently, in this instance the department must release all of the requested information.

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 OR91-428.

Yours very truly,



Rick Gilpin  
Assistant Attorney General  
Opinion Committee

RG/RWP/lcd

Ref.: ID# 13467  
ID# 13205  
ID# 13568

cc: A.F. Williams, Jr.  
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