



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 3, 1991

Ms. Elaine H. Piper
Police Legal Advisor
2 Civic Center Plaza
El Paso, Texas 79999

OR91-608

Dear Ms. Piper:

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# 14106.

You have received a request for information relating to an incident of alleged sexual contact between an on-duty El Paso Police Department employee and a private citizen. Specifically, the requestor seeks the names of the individuals involved in the incident, particularly that of the private citizen involved. You claim that the private citizen's name is excepted from required public disclosure by common-law and constitutional privacy interests, as incorporated by section 3(a)(1) into the Open Records Act. You also claim that the private citizen's name is excepted from required public disclosure by sections 3(a)(2), 3(a)(8), and 3(a)(11).

Section 3(a)(1) of the Texas Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 3(a)(1) protects information if its release would cause an invasion of privacy under the test articulated by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court ruled that common-law privacy excepts only "information contain[ing] highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person," provided "the information is not of legitimate concern to the public."

Having examined the documents submitted to us for review, it is apparent that they concern matters of an "intimate or embarrassing" nature. Although the police officer involved in the incident is a public employee whose actions reflect upon the performance of his public duties, the other individual involved is not a public employee. We do not feel, that the public has a legitimate interest in knowing the name of the private citizen. Accordingly, the private citizen's name and any information which would tend to identify the private citizen must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. For your convenience, we have marked the information that must be withheld. Because we resolve this issue under section 3(a)(1), we need not address the applicability of sections 3(a)(2), 3(a)(8), and 3(a)(11) at this 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 OR91-608.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/GK/lcd

Ref.: ID# 14106

cc: Micah Johnson
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