



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 17, 1991

Ms. A. Lynn Nunns  
Assistant City Attorney  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

OR91-649

Dear Mr. Nunns:

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# 14262.

The City of Corpus Christi Police Department (the department) has received a number of requests for information collected in connection with the requestor's application for employment. Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ) (and authorities cited therein); *see also City of Houston v. Houston Chronicle Publishing Co.*, *supra*, at 324.

The department received three nearly identical requests from the same requestor. Your office received the first request July 31, 1991, which sought "access to any and all information pertaining to myself [the requestor]." The department received another request on October 4, 1991. In the second request, the requestor sought "any and all information pertaining to me which your department may have collected." In response to both of these requests, the department neither released the requested information nor requested an open records determination of this office pursuant to section 7(a) of the Open Records Act. The department received

the third request dated November 5, 1991, in which the requestor states: "I still am requesting copies of all information collected or compiled by your office during my application process." The department received this letter November 7, 1991, and responded by making available to the requestor some of the requested information and by seeking an open records determination from this office pursuant to section 7(a) for the remaining information. The date of the department's request to this office was November 15, 1991. It is clear from the documents submitted to us for review that the department has not complied with the requirements of section 7(a) as regards the original request for information, received by the department July 31, 1991.

We find, however, a compelling interest that the department withhold some of the requested information, specifically, information that is excepted from required public disclosure by common-law privacy interests as incorporated into the Open Records Act by section 3(a)(1). 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), 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." Open Records Decision No. 393 (1983) held that information which identifies or would tend to identify the victim of a serious sexual offense may be withheld under common-law privacy. For your convenience, we have marked the information which you may withhold under section 3(a)(1) of the Open Records Act. The remainder of the information must be released immediately.

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 OR91-649.

Yours very truly,



Kym Oltrogge  
Assistant Attorney General  
Opinion Committee

KO/GK/lcd

Ref.: ID# 14262  
ID# 14355  
ID# 14348  
ID# 14349

cc: Mr. Anthony Klonaris  
10 Artesian Forrest Drive  
Conroe, Texas 77304