



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

July 23, 1975

The Honorable Wilson E. Speir
Director, Texas Department
of Public Safety
P. O. Box 4087
Austin, Texas 78773

Open Records Decision No. 106

Re: Information concerning
investigation and disposition
of complaint against
employee.

Dear Colonel Speir:

You have requested our decision on the applicability of the Open Records Act, article 6252-17a, V. T. C. S., to information concerning the investigation and disposition of a complaint of misconduct on the part of Department of Public Safety officers growing out of an arrest for a traffic violation.

The complainant has made a written request for a "full and complete report of the investigation and punishment assessed" as a result of his complaint about the incident.

You have advised the complainant that an investigation was conducted, have advised him in summary form of the findings of that investigation, and that the officers involved were "properly disciplined." You have declined to disclose the investigation report itself or advise him of the nature of the disciplinary action taken. You contend that this information is excepted from required public disclosure by section 3(a)(2) of the Open Records Act, which excepts:

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . .

The information requested, which you have provided this office, consists of several interagency memoranda with attachments, primarily statements of witnesses and the officers involved. We refer to this information as the investigation report.

Insofar as the investigation report consists of opinion, conclusions, advice and recommendations contained in interagency memoranda, that portion is excepted from required disclosure by section 3(a)(11) as interagency memoranda. Open Records Decisions Nos. 86, 81 (1975). To the extent that the factual information contained in the investigation report is severable, it consists primarily of reports as to what witnesses said, and the statements of witnesses themselves. All relate to the conduct of the officers and the complainant during the incident in question.

In Open Records Decision No. 71 (1975), a request was made for information as to whether a former police department employee was suspected of certain offenses and the circumstances of the termination of his employment. We held that information concerning evaluation or investigation of the employee's qualifications and performance and the circumstances of termination of his employment were excepted from required public disclosure by section 3(a)(2). And we have said that portions of a committee report of a Board of Regents which "make recommendations concerning or necessarily involving evaluation of identifiable personnel" were excepted from required public disclosure. Open Records Decision No. 82 (1975). See also Open Records Decision No. 81 (1975), where we said that portions of a school board committee report reflecting complaints and charges against employees are excepted from required public disclosure.

In light of these decisions, we believe that it is clear that the forced disclosure of the report of the investigation pursuant to the Open Records Act, in this instance is excepted from required public disclosure by sections 3(a)(11) and 3(a)(2) of the Open Records Act.

You also ask whether you must disclose the disciplinary action taken. While the Open Records Act recognizes and protects the justifiable privacy interests of individual governmental employees, the purpose of the Act must not be overlooked. It is to provide the public "full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." Sec. 1. The Act specifically makes public "final opinions . . . as well as orders, made in the adjudication of cases. . . ." Sec. 6(a)(12).

While the Department's action in this case was not taken within a formal adjudication process, we believe this section indicates the purpose of the Act to make public information as to final action taken on matters by an agency through its regular administrative processes, regardless of their formality, unless otherwise excepted.

In this regard, we believe it is significant that while the Open Meetings Act permits discussion of personnel matters to be held in closed session, "any final action on a matter originally considered in closed session can only be taken at a meeting open to the public." Attorney General Opinion H-238 (1974).

In this instance, a citizen has asked an agency to take official action in response to a specific complaint, by way of making a determination as to whether certain misconduct in fact occurred, and if so, to rectify it administratively. Section 3(a)(2) only excepts personnel information "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Disclosure of the Department's final action is clearly warranted. This is just the type of information the Open Records Act is designed to reach. Thus, it is our decision that information as to the Department's final action taken on this complaint is not excepted from disclosure by section 3(a)(2).

You also ask whether the Open Records Act requires the investigation report to be disclosed to the complainant, as opposed to any member of the public.

The Open Records Act makes information available to the public, and with the exception of the special provisions making personnel records and student records available to the individual to whom they pertain [sections 3(a)(2) and 3(a)(14)], the Act does not speak to any right of access based on a special interest.

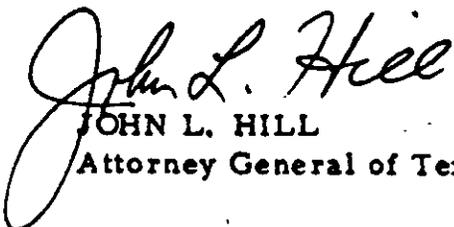
We have said that the Open Records Act is but one means of securing information, either publicly or privately. Open Records Decision No. 18A at p. 3 (1974). See e.g., Attorney General Opinion H-249 (1974) (welfare recipient's right to view his records); Open Records Decision No. 24 (1974) (daughter entitled to autopsy report on mother because of special interest).

Our decisions in this regard are in accord with the rule stated in Palacios v. Corbett, 172 S. W. 777, 782 (Tex. Civ. App. --San Antonio 1915, writ ref'd.) that the common-law right of inspection remains, even though a special statutory right of access to public records is given.

In this case, we will not speculate on the likelihood of this complainant obtaining this information through judicial process.

In summary, final action taken by the Department in this case of alleged misconduct of officers is public information. The investigation report in this case is excepted from required public disclosure under sections 3(a)(2) and 3(a)(11). We decline to speculate in a formal decision or opinion whether this requestor might have a judicially enforceable right of access to this information based on his special interest apart from the Open Records Act.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee