



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. BELL
ATTORNEY GENERAL**

September 15, 1976

**The Honorable N. Alex Bickley
City Attorney for Dallas
City Hall
Dallas, Texas 75201**

Open Records Decision No.143

**Re: Availability under
the Open Records Act of
police department informa-
tion regarding cost, type
and use of electronic
eavesdropping equipment.**

Dear Mr. Bickley:

Pursuant to section 7 of article 6252-17a, V.T.C.S., the Open Records Act, you seek our decision regarding a request for information made in connection with a suit by an individual against the City of Dallas and one of its police officers alleging illegal eavesdropping.

You have declined to produce a requested finger-print card of the officer, since it is the subject of a protective order by the federal district court before whom the suit is pending. Information which is the subject of a protective order is excepted from required public disclosure by section 3(a)(7), as "matters . . . which by order of a court are prohibited from disclosure."

The request calls for "any electronic eavesdropping equipment owned privately but known to be used at any time by on-duty Dallas Police or Metro Squad officers." The information supplied with your request indicates that no such information is known to exist.

Other information requested includes the cost and description of electronic eavesdropping equipment owned by the Police Department, copies of invoices for such equipment, copies of federal or State grants for such equipment, including dates of grants and description of equipment, list and amount of funds spent for "training and/or cooperative participation instruction for electronic eavesdropping technicians," and property dispersement logs for such equipment.

In Open Records Decision No. 22A (1974), we said that information in account, voucher, or contract materials which would reveal specific operations or specialized equipment directly related to investigation or detection of crime is excepted from required public disclosure by the law enforcement records exception. In Open Records Decision No. 127 (1976), we said that the exception was intended to protect valid law enforcement interests such as maintaining as confidential the investigative techniques and procedures used in law enforcement. Id. at p. 7.

We believe that these decisions are applicable to some of the information involved here.

In regard to the specific requests, we believe that descriptions of the specific equipment and its exact cost, as contained in invoices or inventory listings such as that submitted, is excepted from required public disclosure. Of course, the city may release the requested information or a summary of it, such as the dates of purchase by year and total expenditures by year for the general category of electronic eavesdropping equipment.

As to the information in the Law Enforcement Assistance Administration Grant of September 1, 1970, for the Dallas Area Organized Crime Task Force, we believe that the descriptions of certain equipment designed for clandestine operation may be deleted. Our determination is that the information which fits the description is found in item E and items H through T of the budget narrative on pages 4a - 4d of the application. The same information also appears in the detailed budget found on pages 2a and 2b and may be deleted there as well. The rest of the grant document should be disclosed. If any of the persons named in this document are undercover agents, information concerning their identity may be deleted.

We note that the Criminal Justice Division of the Governor's Office has adopted by reference certain rules and guidelines promulgated by the Law Enforcement Assistance Administration concerning disclosure of information in LEAA grants made through the Criminal Justice Division. Rules and Guidelines of the Criminal Justice Division, 001.55.02.006, March 25, 1976.

These guidelines require all information in State Planning Agency records, including grant applications and awards, to be made promptly available for public inspection with certain narrow exceptions. The guidelines permit information to be withheld if it is:

(2) (a) Specifically exempted from disclosure by State law;

(b) Related to operations of criminal justice agencies that are sensitive or confidential to such a degree that disclosure would not be in the interest of the public.

. . .

(3) (b) Under the exception covering sensitive or confidential law enforcement operations, State Planning Agencies may withhold material that relates to such operations as undercover activities to combat organized crime or narcotics traffic, where disclosure might compromise the identity of undercover agents or otherwise jeopardize the success of the operations.

We believe that our decision in regard to the information in the LEAA grant document is consistent with the LEAA guideline, as adopted by the Criminal Justice Division.

In regard to the request for the amount spent training persons as electronic eavesdropping technicians, the information submitted in response to this request, at page 3 of the memorandum dated July 1, 1976, does not appear to us to be of such a sensitive or detailed nature that it would be

excepted from disclosure by section 3(a)(8) of the Open Records Act. We believe that information of this type is public, except insofar as it would disclose the identity of undercover agents.

In regard to the equipment log which indicates which officer received which property and when, it is our decision that this log is clearly excepted from required public disclosure in its entirety by section 3(a)(8).

You make a general contention that the information requested is excepted from disclosure by section 3(a)(3) as information relating to litigation in which the City is in fact a party. This exception does invest the attorney responsible for handling litigation for a governmental body with considerable discretion to determine that information should be withheld from inspection.

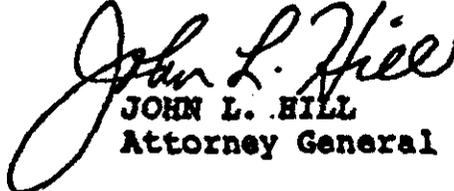
While the Open Records Act does not require parties involved in litigation to be given any earlier or greater access to information than was already available directly in such litigation, Open Records Decision No. 108 (1975), neither should the Act close information which is normally public and only indirectly relates to the litigation.

Your contention is so general that we are unable to ascertain if a determination has been made that release of the material not already excepted from required disclosure by section 3(a)(8) would be detrimental to the City's position in the litigation. We fail to see how general equipment cost information, or the general grant information, or information as to what technical schools an officer has attended at public expense, is information which would adversely affect the City's case. Accordingly, we have not been presented with a sufficiently specific finding which would enable us to determine that section 3(a)(3) of the Act applies.

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It is our decision that the information requested is public, except for that excepted by section 3(a)(7) of the Act by virtue of the protective order and that detailed information specified as excepted by section 3(a)(8).

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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