



# The Attorney General of Texas

October 17, 1978

L. HILL  
City Attorney

Court Building  
12548  
TX. 75711  
2501

Commerce, Suite 200  
TX. 75202  
-8044

Berta Ave., Suite 100  
TX. 79905  
-3484

Int. Suite 610  
TX. 77002

Midway, Suite 312  
TX. 79401  
-5238

Tenth, Suite F  
TX. 75501  
2-4547

In Plaza, Suite 400  
Monro, TX. 78205  
5-4191

Equal Opportunity  
Active Action Employer

Honorable Lee E. Holt  
City Attorney  
City Hall  
Dallas, Texas 75201

Open Records Decision No. 208

Re: Whether the names of police officers who were the subject of complaints and the names of individuals filing those complaints are public under the Open Records Act.

Dear Mr. Holt:

You have received a request under the Texas Open Records Act, article 6252-17a, V.T.C.S., for the names of persons who have made formal complaints against police officers to the police department's internal affairs division, the names of the officers who were the subjects of the complaints, and the disposition of the matter by the department. You advise that the police department makes information public concerning the fact and nature of complaints and the disposition, but does not disclose the name of the complainant or the officer. It is the city's position that the names are excepted from required disclosure under one or more of the following exceptions: section 3(a)(1), 3(a)(2), 3(a)(3), and 3(a)(8). You request our decision pursuant to section 7 of the Act as to whether those exceptions are applicable to this information.

You contend that a complainant's identity is excepted under section 3(a)(1) by the informer's privilege. This might be applicable if the complainant's identity were not disclosed to the officer complained against. The major consideration in preserving an informant's anonymity is to protect him from fear of retaliation by the party on whom he informed. See *Rovlaro v. United States*, 353 U.S. 53, 60 (1957); VIII Wigmore on Evidence § 2374(2), at 766 (McNaughton Rev. 1961). See also Open Records Decision Nos. 183 (1978); 176, 172, 156 (1977); 49 (1974). However, the request here is for the name of the person making a formal complaint, and you explain that the Police Department's procedure is to present a copy of the signed complaint to the officer for response. We note that this is consistent with the requirement of article 6252-20, V.T.C.S., that a copy of any complaint against a law enforcement officer be presented to him. You point out that where the complaint is an internal one, the officer's supervisor may notify him by letter

of the allegations against him. This protects the identity of an officer who informs on a superior. In such cases, we believe that the supervisor's letter constitutes the "formal complaint" within the scope of the request here, and that the identity of an informant unknown to the officer complained of may still be protected. The informer's privilege is not applicable to formal complaints routinely made available to the officer complained of.

You contend that the identity of a complainant is excepted from required disclosure under section 3(a)(8), which excepts

records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement. . . .

Even if a citizen's complaint were to result in a criminal charge against the officer, the basic facts including the name of the complainant, the identity of the accused, and the nature of the complaint are public. Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. — Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). We do not believe that this exception applies to the information requested.

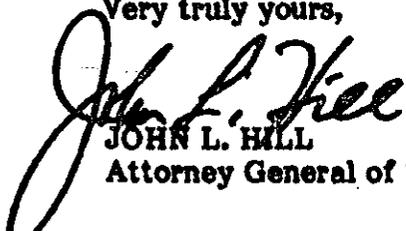
You contend that the identity of the police officer complained against is excepted from required disclosure under section 3(a)(2), which excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . ." You also contend that the information is excepted by the privacy concept under section 3(a)(1).

Our prior decisions establish that the details of the investigation and the internal recommendations as to action to be taken are excepted from required public disclosure. Open Records Decision Nos. 181 (1977); 106 (1975). Open Records Decision No. 106 (1975) dealt with a citizen's complaint about the conduct of Department of Public Safety officers. We said that disclosure of the department's final action in the matter was clearly warranted, and not excepted from required disclosure under section 3(a)(2). In this case, the requestor seeks essentially the same information: the name of the complainant, the officer complained against, and the department's disposition of the matter. It is our decision that this information is not excepted from disclosure under section 3(a)(2). We do not believe that the fact that a citizen made a complaint against a particular police officer, and the disposition of that complaint, is within either the constitutional or the tort right of privacy. See Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976). The public's interest in the activities of their police departments is substantial. See New York Times v. Sullivan, 376 U.S. 254 (1964); City of Phoenix v. Peterson, 462 P.2d 829 (Ariz. App. 1969); Jensen v. Schiffman, 544 P.2d 1048 (Or. App. 1976); Turner v. Reed, 538 P.2d 373 (Or. App. 1975). The information requested is not excepted from public disclosure under either a 3(a)(1) or 3(a)(2) invasion of privacy concept.

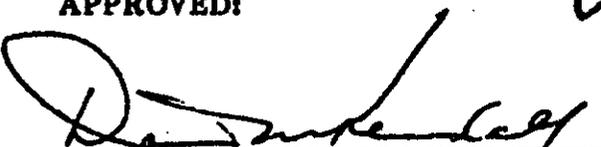
You contend that the information is excepted under section 3(a)(3) as information relating to litigation to which the city or an officer may be a party. There is no showing that litigation is pending or reasonably anticipated in any particular instance as to which information is requested. We have said that a "mere chance of litigation" is not sufficient to make the 3(a)(3) exception applicable. Open Records Decision Nos. 178 (1977); 139 (1976); 80 (1975); 29, 27 (1974). Even if litigation were pending, we do not believe the exception would apply to the basic factual information requested here. In Open Records Decision No. 139 (1976), we considered a request for the names of complainants, nature of complaint, and results of investigations of the complaints filed with a city's affirmative action office. We said that we did not believe that disclosure of the fact of such a complaint by a particular person could in any way compromise the city's position in later litigation. We believe this decision is applicable here.

It is our decision that the names of complainants who filed formal complaints with the police department's internal affairs division, the name of the officer who is the subject of the complaint, and the final disposition of the complaint by the city police department is public information and is required to be disclosed. The information is not excepted under section 3(a)(1), 3(a)(2), 3(a)(3), or 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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