



The Attorney General of Texas

November 6, 1981

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Honorable Wade Adkins
El Paso City Attorney
2 Civic Center Plaza
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Open Records Decision No. 285

Re: Whether investigative report concerning misconduct in city tax office is available under the Open Records Act

Dear Mr. Adkins:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the availability of an investigative report concerning misconduct in a city tax office. The report was compiled, at the request of the mayor, by the intelligence division of the El Paso Police Department. It consists of two kinds of documents: synopses of interviews with witnesses, and a report summarizing the allegations and the investigator's findings and recommendations.

The investigation in this case was initiated by the mayor and was essentially administrative in nature. Nevertheless, we believe that synopses of witnesses interviews are excepted from disclosure by section 3(a)(1) of the act, as "information deemed confidential by law," in this case, the informer's privilege. Open Records Decision Nos. 279 (1981); 172 (1977). The allegations which prompted the investigation alleged conduct which might have resulted in criminal prosecution. Although no criminal prosecution has been undertaken, we have previously observed that, unless informants' confidentiality is maintained, voluntary citizen cooperation with law enforcement investigations might be compromised. Open Records Decision No. 252 (1980). Furthermore, although we do not believe that the investigation in this case should be viewed as a police matter, it is well established that the informer's privilege applies to "administrative officials having a duty of inspection or law enforcement within their particular spheres." Open Records Decision No. 279 (1981). In our opinion, the privilege must also be extended in this instance to include the content of the informers' statements, since the statements themselves would in many cases tend to reveal the identity of these informants. Roviaro v. United States, 353 U.S. 53, 60 (1957); Open Records Decision Nos. 252 (1980); 216 (1978). We conclude that the synopses of interviews with witnesses are excepted from disclosure by section 3(a)(1) of the Open Records Act. In view

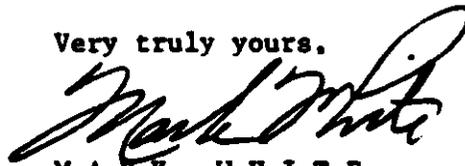
of this conclusion, we need not consider the applicability of section 3(a)(8) of the act.

As to the actual report, although the allegations and portions of the information obtained through investigation appear to be subject to disclosure, the opinions and recommendations of the investigator, together with certain information which is inextricably intertwined with those opinions and recommendations, are excepted from disclosure by section 3(a)(11), as:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency.

Open Records Decision Nos. 239 (1980); 231 (1979). We have marked those portions of the report which may be so withheld.

Very truly yours.



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