



The Attorney General of Texas

December 21, 1981

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Honorable John C. Ross
Lubbock City Attorney
P. O. Box 2000
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Open Records Decision No. 297

Re: Whether investigation of
traffic ticket fixing is
subject to public disclosure
under the Open Records Act

Dear Mr. Ross:

You have requested our decision as to whether a report of an investigation into traffic ticket fixing is available to the public under the Open Records Act, article 6252-17a, V.T.C.S.

On March 10, 1981 the internal auditor of the city of Lubbock submitted to the city's director of finance a memorandum regarding a sampling of dismissed traffic tickets. The report focused upon a group of 21 individuals who had had 127 tickets dismissed over a three-year period. Of those 127 tickets, 118 were dismissed by a single municipal judge. On May 5, the city manager turned over this report to the Lubbock Police Department for further investigation. The report of the police investigation, dated May 13, 1981, consists of interviews with those individuals who had had multiple tickets dismissed, an affidavit from one such person, interviews with officers of the municipal court and with a bail bondsman who allegedly acted as a liaison between the individual and the court, and a cover letter summarizing the findings, drawing conclusions and making recommendations.

The police investigation was submitted to the criminal district attorney on May 14, 1981, and the judge involved was suspended. On June 4, a grand jury returned a no bill against the judge. On May 26, the State Commission on Judicial Conduct began an investigation into the matter. The commission staff interviewed 18 of the individuals who had had tickets dismissed and the judge appeared before the commission. On August 28, the commission announced that it had not found any evidence of financial gain by the judge and, as a result, it would take no disciplinary action against him. Although both the criminal investigation and the commission's investigation could be reopened if new evidence became available, neither investigation is active at this time. You have received a request for the original memo from the city's internal auditor as well as for the report of the police investigation which incorporates that memo. You suggest that

this material is excepted from disclosure by sections 3(a)(8) and 3(a)(11) of the Open Records Act.

As we said in Open Records Decision No. 252 (1980), the availability of material from an inactive criminal investigatory file must be determined on a case-by-case basis. Information may be withheld even from a closed file if disclosure "will unduly interfere with law enforcement and crime prevention." Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). See also, Open Records Decision No. 216 (1978). Much of the information requested here consists of the names and statements of witnesses. In our opinion, the names of these persons and their statements may be withheld if it is determined:

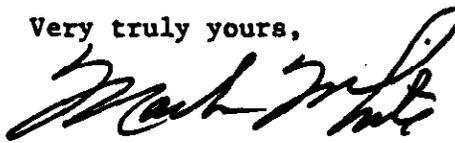
from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers.

Open Records Decision No. 252. Whether a witness was given an express promise of confidentiality is an important factor to be considered in reaching this decision, but it is not alone determinative either of disclosure or of non-disclosure. If you make the requisite determination, as indicated supra, you may withhold the names and statements of witnesses, as well as the affidavit, under section 3(a)(8) of the Open Records Act.

As to the cover letter accompanying the May 13 report of the police investigation, we do not believe that its disclosure could reasonably be said to "unduly interfere with law enforcement and crime prevention," and thus, it is not excepted by section 3(a)(8). The second paragraph thereof, however, expresses the writer's opinion of the investigation and makes a recommendation. As a result, it is excepted from disclosure under section 3(a)(11) of the act. The remainder of the cover letter should be made available. Attorney General Opinion MW-372 (1981); Open Records Decision No. 239 (1980).

The March 13 memorandum from the auditor to the director of finance is basically statistical, and it contains no advice, opinions or recommendations which would permit it to be excepted under section 3(a)(11). Accordingly, that memo should be made available, along with its attachment, an extensive listing of persons who received multiple traffic tickets over a particular period.

Very truly yours,



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