



The Attorney General of Texas

December 31, 1982

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Gentlemen:

The Secretary of State and the Department of Public Safety have received requests under the Open Records Act for computer printouts listing possible felons on the voter registration lists.

These computer lists were sent to each county tax assessor-collector with a cover letter explaining that they were created by the Secretary of State's Office to assist him in checking his voter registration files for accuracy. According to the Secretary of State's letter requesting our opinion, the computer printouts are being returned to his office and are immediately being turned over to the Department of Public Safety. The Secretary of State has also been requested to provide access to correspondence between his office and the Department of Public Safety regarding the use of that agency's files or computer tapes to compile the list of possible felons. The Secretary of State has submitted one letter to us, sent from his office to the Department of Public Safety, dated July 20, 1982. It appears to reply to an earlier letter sent by the department. He has not submitted the earlier letter for our consideration, and we assume he does not object to releasing this letter, nor any other relevant correspondence. The Secretary of State cites sections 3(a)(3) and 3(a)(11) as provisions which render the list and the letter confidential. The Department of Public Safety cites sections 3(a)(1), 3(a)(3) and 3(a)(8) as provisions rendering this information confidential.

Section 3(a)(1) of the Open Records Act, article 6252-17a, V.T.C.S., excepts from public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

Open Records Decision No. 349

Re: Availability under the
Open Records Act of list of
possible convicted felons
prepared by Secretary of
State's Office

Section 3(a)(3) of the Open Records Act excepts from public disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

V.T.C.S. art. 6252-17a, §3(a)(3). The Secretary of State and the Director of the Department of Public Safety have been named in their official capacities as defendants in a lawsuit involving the requested material. Voluntarios Organizados Trabajando Para Accion, Inc. v. Dean, No. B82-269 (S.D. Tex., filed Sept. 28, 1982). The suit was brought to enjoin defendants from disclosing information such as that contained in the computer printouts. In settlement of the injunction suit, the state has agreed with the parties to the lawsuit not to disseminate the list except pursuant to court order. This agreement is recorded in a court order entered by the federal court in Brownsville. We believe the list is excepted from public disclosure pursuant to section 3(a)(1) as information deemed confidential by judicial decision.

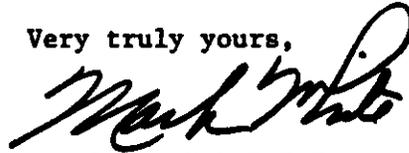
The lawsuit also raises issues regarding the transfer of information from the Department of Public Safety to the Secretary of State's Office, to which the letter is relevant. This letter has been made available to the opposing parties in the litigation in connection with depositions. Section 3(a)(3) protects a governmental entity from being compelled to compromise its position in litigation by divulging information relating thereto. Open Records Decision No. 288 (1981). It ensures that a party suing the state will have to obtain such information through discovery. Id. However, now that the plaintiff has obtained this information pursuant to discovery, the purpose underlying section 3(a)(3) has been fully served, and the exception is no longer applicable. See also Attorney General Opinion MW-417 (1981) (litigation exception of Open Meetings Act inapplicable to meeting between prospective plaintiff and defendant). The Secretary of State is also a defendant in Angerman v. Dean, C.A. No. 339,884, Dist. of Travis County, 250th Judicial Dist. of Texas, filed September 23, 1982. The letter has not been released pursuant to discovery in this suit; however, the assistant attorney general representing the Secretary of State does not object to its release. Therefore, section 3(a)(3) does not except the correspondence from public disclosure.

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You also suggest that the correspondence is excepted from public disclosure by section 3(a)(11) of the Open Records Act. The letter summarizes various Election Code provisions, stating certain legal consequences which flow therefrom. Section 3(a)(11) excepts from public disclosure "advice, opinions, and recommendations." Open Records Decision Nos. 313 (1982); 273 (1981).

We believe the portions of the letter which state the legal implications of certain Election Code provisions constitute opinions of the author and may be excepted from public disclosure. These portions have been marked on the copy you supplied. The rest of the letter is available to the requestor under the Open Records Act.

Very truly yours,



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