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Mr. Edward H. Perry
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Open Records Decision No. 371

Re: Whether report on fire by Arson and Fire Investigation Section of Dallas Fire Department is excepted from public disclosure by section 3(a)(8) of the Open Records Act

Dear Mr. Perry:

You have asked whether certain materials prepared by the city of Dallas Fire Department during the investigation of a fire which occurred at a Dallas Housing Authority project are available to the public under the Open Records Act, article 6252-17a, V.T.C.S. You contend that section 3(a)(8) of the act excepts these materials from required disclosure. Section 3(a)(8) 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.

The Arson and Fire Investigation Section of the Dallas Fire Department maintains these investigative materials. This division of the department is a "law enforcement agency" within the meaning of section 3(a)(8). Open Records Decision No. 127 (1976).

In Open Records Decision No. 127 (1976), this office dealt with the question of whether the city of Dallas had to release certain investigative records concerning a specific fire. This decision concluded that Houston Chronicle Publishing Corp. 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), required the release of the following information:

time of the occurrence, the fire department's response, the location of the fire, how and by whom it was reported, a description of the building, estimates of the value of the building and its contents, whether and to what amount the

property is insured by whom, and a description of any injuries or deaths that occurred with the name and age of the victim, nature of injury, conveyance and hospital, and date and time of death, as applicable [and] a detailed description of the cause and origin of the fire.

On the other hand, the decision concluded that the following information could be withheld under section 3(a)(8):

the investigator's opinion and conclusions concerning the names of suspects, the possible motive for an incendiary fire, evidence found, names of witnesses and summaries of their statements, and information concerning the description, background, and possible location of any suspect.

In Open Records Decision No. 134 (1976), this office held that the state fire marshall had to release the following information in an investigative report concerning a specific fire:

the name of the investigator(s), the name of the person requesting the investigation, the date of such request, the probable cause of the fire, the owner, occupant, location of the loss or incident, date and time of incident, weather conditions, structural information, name and address of insuring company, amount of insurance involved, name of agent, adjuster, extent of damage, whether there were any fatalities or injuries involved, whether legal action was taken, and the status of the case [and] the dates of the investigation, the construction and condition of the property damaged.

The decision concluded that the following information could be withheld under section 3(a)(8):

those portions of the report calling for the investigator's opinion and conclusions concerning probable motive for the fire, the names of possible suspects, the names of witnesses, the previous fire loss recorded of the parties, and notes as to laboratory tests.

In 1977, the Texas Supreme Court decided Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). One of the issues in that case was whether, pursuant to a subpoena, the fire marshall of Harris County had to produce records of his investigation of a fire. He willingly produced certain basic factual information, such as the location and

description of the house, the cause and location of the fire, etc., but sought to withhold the remainder of his records on the ground that the disclosure of them would interfere with an active arson investigation. The court held that under section 3(a)(8) and article 1606c, V.T.C.S., basic factual information pertaining to a fire must be produced, but information in an active arson file such as the names and statements of witnesses, the "opinions and conclusions of the fire marshal's investigators regarding witnesses, suspects, statements made by persons questioned, and the investigators' opinion as to the motive for an intentionally set fire," and tests performed by investigators to determine how the fire was started, the materials used in starting it, and who started it, should remain undisclosed. 551 S.W.2d at 709. The court concluded that "the better policy reason is to deny access to . . . materials if it will unduly interfere with law enforcement and crime prevention." 551 S.W.2d at 710.

In this instance, you have submitted exhibits labelled "A" through "J." You have advised us that you are willing to release exhibits "A," "B," "C," and the first two pages of exhibit "D." You seek to withhold the rest of these materials, essentially because "the investigation into the fire in question is still pending."

We first consider the casualty reports, which constitute the remainder of exhibit "D." Certain information concerning two of the five people who died in this fire, which is reflected in these reports, *i.e.*, their names and ages, gender, ethnicity, and the fact that each died of smoke inhalation, is also contained in exhibit "C," which, as we have noted, you are willing to release. The fact that this information is in a document which you are willing to release precludes you from claiming that it may be withheld when contained in a document which you are not willing to release. As to the remainder of the casualty reports concerning these two decedents, we find nothing therein that is not public information under Open Records Decision Nos. 127 and 134 (1976). In our opinion, the release of the information in these reports would not "unduly interfere with law enforcement and crime prevention." Ex parte Pruitt, supra, at 710.

Another casualty report in exhibit "D" concerns a decedent who is not mentioned in exhibit "C." In our opinion, however, the information contained in this report is no different from the information contained in the other casualty reports. It too must be made available to the public.

Exhibit "E" describes the clothing worn by four of the decedents and the amount of carbon monoxide in their bloodstreams. You contend that the notations concerning smoke inhalation may be withheld under section 3(a)(8). We believe the information on the amount of carbon monoxide in the decedents' blood is comparable to the blood and other lab reports held to be unavailable to the public in Open Records Decision Nos. 127 and 134 (1976). This information is, therefore, protected by section 3(a)(8).

Exhibit "F" consists of forensic reports concerning the five decedents. Most of the information contained therein is also contained in the aforementioned exhibit "C," and, in our opinion, that which is not is available to the public under Ex parte Pruitt, supra, and Open Records Decision Nos. 127 and 134 (1976).

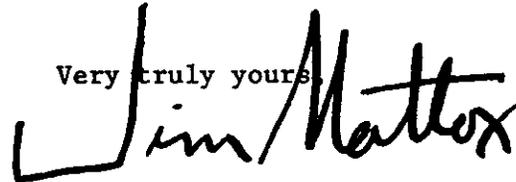
Exhibit "G" is a memorandum from the captain in charge of this fire investigation to the chief of the fire department. With the exception of the second sentence in the third paragraph, the information contained in this memorandum is precisely the kind of basic factual information pertaining to a fire which was held to be available to the public in the aforementioned decisions of the Texas Supreme Court and this office. Because the second sentence of the third paragraph identifies a witness and contains his statement, it may be withheld. Likewise, Exhibit "H," which is the statement of a witness, may be withheld.

Exhibit "I" is a diagram of the house which burned. We conclude that this diagram constitutes the kind of investigative material which may be withheld under section 3(a)(8) as construed in the foregoing decisions.

Exhibit "J" is a narrative report by a member of the fire department concerning rescue efforts made at the scene of the fire. It is entirely factual and you have made no showing that its release would unduly interfere with law enforcement. See Open Records Decision Nos. 354 (1982); 287 (1981).

To summarize: You do not seek to withhold Exhibits "A," "B," "C," and the first two pages of "D." We conclude that the remainder of Exhibit "D," Exhibit "F," and Exhibit "J" may not be withheld under section 3(a)(8). Exhibits "E," "H," "I," and part of "G" may be withheld under section 3(a)(8).

Very truly yours,



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