



The Attorney General of Texas

May 17, 1983

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An Equal Opportunity/
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Honorable Mike Driscoll
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Open Records Decision No.379

Re: Whether constable must
provide access to files main-
tained in connection with
writs of execution

Dear Mr. Driscoll:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the availability of a constable's files maintained in connection with writs of execution. The files in question are not records of the judiciary and therefore are not excluded from the coverage of the Open Records Act. See Open Records Decision No. 78 (1975).

A writ of execution is a means of enforcing the judgment of a court. It is issued at the request of a prevailing party and is directed to a sheriff or constable. Tex. R. Civ. Proc. 621, 622. The writ must:

describe the judgment, stating the court in which, and the time when, rendered, and the names of the parties in whose favor and against whom the judgment was rendered.

Tex. R. Civ. Proc. 629. When real or personal property is levied upon under a writ of execution, the sheriff or constable is directed to sell it at a public auction. Tex. R. Civ. Proc. 646a, 649. Prior to such sale, the officer must furnish proper notice as follows:

The time and place of sale of real estate under execution, order of sale, or venditioni exponas, shall be advertised by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale, in some newspaper published in said county. . . . If there be no newspaper published in the county, or none which will publish the notice of sale for the compensation herein fixed, the officer shall then post such notice in writing

in three public places in the county, one of which shall be at the courthouse door of such county, for at least twenty days successively next before the day of sale. The officer making the levy shall give the defendant, or his attorney, written notice of such sale, either in person or by mail, which notice shall substantially conform to the foregoing requirements.

Tex. R. Civ. Proc. 647.

Previous notice of the time and place of the sale of any personal property levied on under execution shall be given by posting notice thereof for ten days successively immediately prior to the day of sale at the courthouse door of any county and at the place where the sale is to be made.

Tex. R. Civ. Proc. 650.

In the present instance, the requestor seeks disclosure of the following with regard to "files where the levy, sale and disbursement of sales proceeds has already been completed":

1. letters to the constable's office from the holder of the writs or its representative, requesting the constable's office to levy and sell property of the judgment debtor;
2. accounting records showing the receipt of any funds for executing the writs;
3. notices of sale of real or personal property and the addresses where such notices were mailed;
4. any memoranda or notations made by the constable's office during the period the writ was in the constable's possession;
5. any memoranda or notations made by the officer who actually conducted any sale;
6. accounting records showing the receipt or disbursement of any funds received from the actual conduct of the sale;

7. copies of any writs, bills of sale, deeds, or any other written material contained in the file.

The requestor seeks the following with regard to "actual files where a levy has taken place, but a sale has not yet occurred":

8. letters to the constable's office from the holder of any writ and the name, address, and telephone number of the person or attorney requesting the levy and sale;

9. copies of notices of any pending sale of real or personal property;

10. name and address of the judgment debtor where the notice of sale was mailed;

11. whether or not the sale is still proceeding as scheduled, and in the event the sale is cancelled, the reason for its cancellation.

You contend that all of the requested information is excepted from disclosure under section 3(a)(4) of the Open Records Act, as:

information which, if released, would give advantage to competitors or bidders.

Even if section 3(a)(4) were otherwise applicable to the material requested, it has no application where bidding has been completed. Open Records Decision Nos. 319, 302 (1982); 255 (1980); 201, 184 (1978). Since the first seven items are limited to completed sales, you may not properly invoke section 3(a)(4).

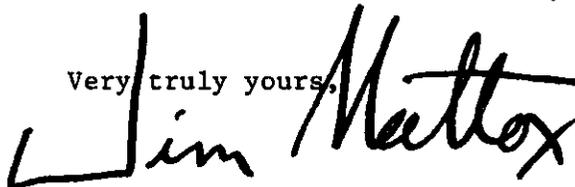
As to active files, notices of pending sales are specifically required to be published, either by advertising in a newspaper, Texas Rule of Civil Procedure 647, or by posting notice on the door of the courthouse, Rule 650. The writ itself must identify "the parties in whose favor and against whom the judgment was rendered." Rule 629. Thus, the identities of both the "person or attorney requesting the levy and sale," and the "judgment debtor" are available from records which are specifically made public by statutory and common law. See V.T.C.S. art. 1945 (records of county clerk); V.T.C.S. art. 2383 (records of justice court); Open Records Decision Nos. 274 (1981); 25 (1974).

In addition, section 3(a)(4) requires a showing of some specific actual or potential harm in a particular competitive situation. Open Records Decision Nos. 331, 309 (1982); 232 (1979); 203 (1978). In

Attorney General Opinion MW-591 (1982), the agency from whom the information was requested made a compelling demonstration of potential competitive harm to bidders. In this instance, however, you have not indicated how knowledge of the identity of either party to the litigation which forms the basis of the execution and sale of the property might afford a competitive advantage to bidders on that property or might place the plaintiff at a competitive disadvantage if he desires to bid on the property. We conclude that items 8 through 10 are not excepted from disclosure by section 3(a)(4).

Item 11 requires the constable to answer factual questions. The Open Records Act does not require him to do so. Open Records Decision No. 347 (1982). He may therefore disregard that inquiry. See also, Open Records Decision Nos. 353 (1982); 243 (1980) (governmental body not required to compile or extract information which is readily available to the requestor).

Very truly yours,



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