



The Attorney General of Texas

August 17, 1983

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Mr. Tom Todd
City Attorney
City of Arlington
P. O. Box 231
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Open Records Request No. 397

Re: Availability under the
Open Records Act of internal
investigation of alleged
criminal misconduct of peace
officer

Dear Mr. Todd:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the availability of an internal investigation of alleged criminal misconduct by a police officer.

A police officer presently employed by the city of Arlington was one of a number of individuals investigated by the Arlington Police Department in 1974 regarding the theft of a tractor/trailer. The same officer was also the subject of a 1978 report by the Mansfield Police Department. That report focused on the officer's detention for several traffic violations and his conduct while detained. No criminal prosecution resulted from either incident, and the statute of limitations has now expired as to each. Both investigations may thus properly be deemed "closed." See Open Records Decision Nos. 252 (1980); 216 (1978). A newspaper seeks to obtain all information about these incidents in the custody of the Arlington Police Department. You suggest that the information is excepted from disclosure by sections 3(a)(1), (2), (3), (8), and (11) of the Open Records Act.

Section 3(a)(3) excepts from 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.

This office has stated repeatedly that a mere chance of litigation is not sufficient to invoke the section 3(a)(3) exception. It is applicable only where litigation is pending or reasonably anticipated in regard to a specific matter. Open Records Decision Nos. 351, 331, 328, 323, 311 (1982); 288 (1981); 219, 208 (1978). You have presented no evidence indicating that particular litigation is pending or reasonably anticipated with regard to any of the information under consideration here.

Section 3(a)(2) excepts

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . .

This office has held that section 3(a)(2) may be invoked only when information reveals "intimate details of a highly personal nature." Open Records Decision Nos. 315 (1982); 298, 284, 269 (1981); 224 (1979); 169 (1977). None of the information you have submitted comports with this standard.

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.

There is at present no ongoing investigation specifically linked to the records at issue here. This office has said that the availability of information from an inactive criminal investigatory file must be determined on a case-by-case basis. Information may be withheld from an inactive file if disclosure "will unduly interfere with law enforcement and crime prevention." Ex parte Pruitt, 551 S.W.2d 706, 710 (Tex. 1977); Open Records Decision Nos. 350 (1982); 197 (1978). In general, the names and statements of witnesses 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. 297 (1981). 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 previously indicated, you may withhold the names and statements of witnesses under section 3(a)(8).

Section 3(a)(11) excepts from disclosure

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.

Section 3(a)(11) has long been construed to except only advice, opinion and recommendation. Open Records Decision Nos. 354, 349, 335, 331, 323, 315, 310 (1982); 295, 285, 273 (1981). None of the material submitted to us may be so denominated.

Section 3(a)(1) excepts

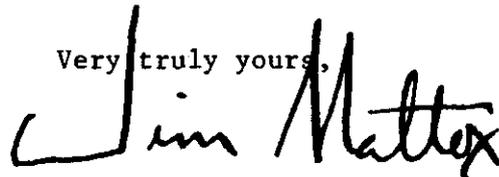
information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

In Open Records Decision No. 372 (1983), we recognized that certain information might be excepted under section 3(a)(1) by the law of "false light" privacy. In that decision, we concluded that

a governmental body may withhold information on the basis of false light privacy only if it finds, based upon the weight of evidence demonstrable to this office, that there is serious doubt about the truth of the information. In addition, the information must be highly offensive to a reasonable person and the public interest in disclosure must be minimal.

You have not furnished sufficient information in this instance to enable us to determine that any of the material submitted is excepted from disclosure on the basis of false light privacy. If, however, you have additional information about the falsity of statements concerning specific material, you may resubmit these matters for our consideration within 10 days.

Very truly yours,



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