



The Attorney General of Texas

July 25, 1984

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Honorable Mike Driscoll
Harris County Attorney
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Open Records Decision No. 421

Re: Whether certain information held by a constable is available to the public under the Open Records Act

Dear Mr. Driscoll:

You have informed us that the local news media has asked Harris County Constable Ed Maxon "to release information including, but not limited to, the following documents":

1. Memoranda from either the constable or any of his supervisory personnel which relate to matters of policy in regard to the operation and/or supervision of Constable Maxon's contract deputy program;

2. Any statistical reports showing the nature and number of traffic citations written by Precinct 5 deputies during 1982 and 1983 and/or the front cover sheets of all tickets and offense reports written by said deputies in 1982 and 1983;

3. A list of all Precinct 5 deputies who performed off-duty private security work on behalf of certain apartment complexes during September-October 1983;

4. The performance bonds of all those individuals listed by the State of Texas as holding a reserve deputy commission in Precinct 5 during 1980, 1981, 1982 and 1983;

5. The current rules and policy manual for Precinct 5;

6. Information regarding the following political campaign expenditures;

- a. Name of company or companies from whom [were] purchased or leased billboard space in 1979-1980;
 - b. Nature of specific disbursements from an expenditure to an advertising agency in 1980; and
 - c. Whether any other funds were expended in 1979 or 1980 for the purpose of purchasing or leasing billboard space;
7. Any documentation which authorized Precinct 5 employees to work overtime or extra hours beyond regular scheduled hours in 1983;
8. The exact date certain individuals applied for a commission as a deputy for Precinct 5.

You have not indicated what the words "but not limited to" embrace, nor have you furnished us with additional materials. Thus, we limit our inquiry to the eight categories of information listed above.

At the outset, we note that on January 20, 1984, we sent you a letter requesting additional information concerning this request, indicating that if we received no response within ten days, we would assume that you wished us to proceed on the information at hand. Having received no response, we will resolve the questions presented with the information at hand.

You contend that sections 3(a)(8) and 3(a)(1) of the Open Records Act, article 6252-17a, V.T.C.S., except the information in the first and second categories; that sections 3(a)(8) and 3(a)(2) apply to the third category; that section 3(a)(2) applies to the fourth category; that sections 3(a)(8) and 3(a)(11) apply to the fifth category; that sections 3(a)(2) and 3(a)(8) apply to the seventh category; and that section 3(a)(2) applies to the eighth category. You also contend that

Item 6 is not governed by the Open Records Act since the request requires the constable to answer factual questions relevant to his political campaign expenditures. The Open Records Act does not require him to do so.

The sections of the Open Records Act to which you refer except from required public disclosure:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

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

.

(8) 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;

.

(11) 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

At the outset, we make the following general observations concerning your claims under sections 3(a)(1), 3(a)(2), and 3(a)(8). Section 3(a)(1) excepts information deemed confidential by law. With one exception, you have not cited any constitutional provision, statute, or judicial decision that would apply to any of the requested information, and we are aware of none. Section 3(a)(2) applies only if the release of requested materials would lead to a "clearly unwarranted" invasion of an employee's personal privacy; its scope is very narrow. See, e.g., Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546 (Tex. Civ. App. - Austin 1983, writ ref'd n.r.e.); Open Records Decision No. 400 (1983). You have not indicated any way in which any of the requested materials could be held to be excepted under the rigid standards of section 3(a)(2). As for section 3(a)(8), this office has held:

When the 'law enforcement' exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release of it would unduly interfere with law enforcement.

Open Records Decision No. 287 (1981). Before considering any of the specific categories of information, therefore, we conclude, on the strength of the information we have at hand, that your section 3(a)(1)

claim is possibly valid in only one instance, that your section 3(a)(2) claim must be rejected in toto, and that section 3(a)(8) applies only to the extent that the requested information "suppl[ies] the explanation on its face, how and why release of it would unduly interfere with law enforcement." Open Records Decision No. 287 (1981).

We first consider the information in the sixth category. The Open Records Act states:

All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information . . . with the following exceptions only (Emphasis added).

V.T.C.S. art. 6252-17a, §3(a). You assert that Open Records Decision No. 347 (1982) stands for the proposition that the information in category six is outside the scope of the Open Records Act. We have reviewed this decision, and we conclude that it is inapposite. As to whether the requested information is within section 3(a), we note that in our letter of January 20 we suggested that the information probably is within this section, and we invited you to indicate why we should conclude otherwise. As noted, we received no response. We therefore conclude that, if the requested information exists, you must disclose it, unless you can make a sufficiently strong showing that it is in fact not within the ambit of section 3(a), or that it is excepted from disclosure thereunder. We note, however, that the Open Records Act applies only to information in existence; it does not require a governmental body to prepare new information. Open Records Decision No. 342 (1982).

We next turn to the fourth category. You have cited no law authorizing you to withhold this information and we are aware of none; thus, we reject your claim under section 3(a)(1). Moreover, we believe it is clear that the requested performance bonds cannot be withheld under section 3(a)(2). Anyone holding a reserve deputy commission is a public employee; as such, his performance bond is of legitimate interest to the public, and he cannot be heard to complain that release of this information would lead to a "clearly unwarranted" invasion of his personal privacy. The information in category four is therefore available to the public.

We also conclude that the information in the third category is available to the public. In our opinion, information indicating which deputies performed off-duty private security work is not excepted under section 3(a)(8), since it has nothing to do with the duties of the Harris County Constable's Office. We have already rejected your

section 3(a)(2) claim. Of course, if the information is not in existence, you have no obligation to prepare or compile it as a result of the request. See Open Records Decision No. 342 (1982).

The information in category seven is also public information. Clearly, information indicating which public employees were authorized to work overtime is of legitimate interest to the public. You have not indicated any way in which the release of this information could unduly interfere with law enforcement, and the information itself certainly does not indicate how this might occur. We therefore reject your section 3(a)(8) claim. Your section 3(a)(2) claim has already been rejected.

The information in category eight is also public information. Again, the public has a legitimate interest in knowing when various individuals applied for a commission as a deputy. Accordingly, no applicant or present or former employee can be heard to complain that the release of this information would lead to a "clearly unwarranted" invasion of his personal privacy. Section 3(a)(2) is therefore inapplicable.

We next turn to the first category. You have not supplied any of the requested materials. Accordingly, we cannot conclude that this information, on its face, indicates that section 3(a)(8) is applicable. As noted, you have provided us with no arguments in support of the proposition that section 3(a)(8) is applicable. Given the information available, therefore, we conclude that section 3(a)(8) is inapplicable. As for section 3(a)(11), this section excepts "advice, opinion and recommendation" concerning policy matters. See, e.g., Open Records Decision No. 335 (1982). Without the requested materials, we cannot determine the extent to which section 3(a)(11) applies. We therefore advise that although the portions of the requested materials that constitute advice, opinion and recommendation may be withheld, if you decide to withhold any information under this section you must submit it to us for our determination as to whether section 3(a)(11) is applicable.

We now consider the information in the second category. In support of your section 3(a)(8) claim, you assert:

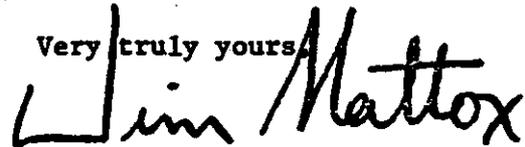
The disclosure of some of the requested information on the offense reports might unduly interfere with law enforcement particularly in narcotics cases where co-defendants have not yet been arrested. Such premature disclosure might give those individuals an opportunity to avoid arrest. Note that the requests do not limit themselves to charges filed against adults.

Juveniles might be named as defendants or as victims of rape, child abuse or sexual abuse.

Since you have not submitted any of the requested materials, we cannot determine the extent to which either section 3(a)(8) or section 3(a)(1) might apply. In general, we agree with your assertion that in some instances the disclosure of the requested information might lead to unacceptable results. Open Records Decision Nos. 366 (1983) and 127 (1976) set forth the standards to be used in determining whether the information in the second category may be withheld. If you conclude that certain materials in this category may be withheld under these decisions, you must submit it to us for confirmation. Certain statutes may also apply, as in the case of juveniles. See, e.g., Family Code §51.14. Again, however, if you decide to withhold information in the second category on section 3(a)(1) grounds, you must submit it to us for our determination as to whether section 3(a)(1) is applicable.

We finally consider the materials in category five. You have submitted a copy of the requested materials, which were prepared for use in the constable's department. We believe that these materials indicate, on their face, how their release could unduly interfere with law enforcement, and we therefore conclude that they may be withheld under section 3(a)(8).

Very truly yours,



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