



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

January 12, 1989

Mr. T.K. Haynes  
City Attorney  
The City Of Paris  
P.O. Box 9037  
Paris, Texas 75461-9037

Dear Mr. Haynes:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5035; this decision is OR89-016.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The City of Paris received a request from Mr. Leighton Cornett, an attorney, for a complete copy of the police report on his client. The police report includes, in addition to the offense report, a prisoner check report, a magistrate's certificate, an investigator's report, autopsy report, a death certificate, a laboratory report, and similar items. The City of Paris provided Mr. Cornett with the first page of the offense report, but has withheld the remainder of the police report. You ask whether the remainder of the report may be withheld under sections 3(a)(3) or 3(a)(8) of the Open Records Act.

Section 3(a)(8), known as the "law enforcement" exception, excepts from required public disclosure:

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records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Information is excepted from disclosure by section 3(a)(8) if release of the information will unduly interfere with law enforcement and crime prevention. Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).

The controlling case with regard to the availability of arrest-related information is Houston Chronicle Publishing Co. 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). The decision in this case is summarized in Open Records Decision No. 127 (1976) (copy enclosed). You complied with the requirement to release the first page of the offense report. However, the rest of the report is not per se excludible. Information may be withheld only if it falls into one of the categories of information described in Open Records Decision No. 127, or if the governmental body shows how its release would unduly interfere with law enforcement efforts. See Open Records Decision No. 434 (1986). In addition, some of the documents included with the police report do not fit within the description of documents given by the Houston Chronicle court. These documents must also be considered in the light of the information declared exempt by the court. We have marked those documents or portions of the documents that may be withheld under section 3(a)(8).

Section 3(a)(3) of the Open Records Act, known as the litigation exception, excepts from required public disclosure:

information relating to litigation of a civil or criminal nature and settlement negotiations, to which the state or a 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.

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To claim section 3(a)(3) the governmental body must show: 1) that litigation is actually pending or reasonably anticipated; and 2) that the information in question relates to the litigation such that withholding the information is necessary to preserve the governmental body's strategy or legal interests in the litigation. Open Records Decision No. 478 (1987); see Open Records Decision No. 416 (1984).

You have met the first part of the test for withholding information under section 3(a)(3) because litigation is actually pending; however, you have failed to show how the information would impair the state's strategy in the criminal litigation. See Open Records Decision No. 349 (1982). You have 10 days to submit evidence demonstrating how the information not already excluded under section 3(a)(8) would affect the state's case; otherwise, it must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-016.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee* 

Open Government Section  
of the Opinion Committee  
Prepared by Jennifer S. Riggs  
Chief, Open Government Section

JSR/BLS/bc

Ref: ID# 5035

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Encl: Marked Documents  
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