



THE ATTORNEY GENERAL
OF TEXAS

October 10, 1989

JIM MATTOX
ATTORNEY GENERAL

Mr. K. R. Larson
Officer, Legal Services Unit
Houston Police Department
City of Houston
61 Riesner Street
Houston, Texas 77002

Dear Mr. Larson:

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# 6952; this decision is OR89-328.

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 Houston Police Department (the department) received an Open Records request from a convicted felon for police records relating to the criminal investigation of the crime for which he had been convicted, including the police investigatory report and the police incident report. The department seeks to withhold the requested information from required public disclosure under sections 3(a)(1) and 3(a)(3) of the open records act.

Section 3(a)(1) protects information deemed confidential by law, including statutory law or judicial decision. The names of victims of sex crimes have been held to be confidential in prior decisions of this office. See Open Records Decision No. 440 (1986); 339 (1982). However, notwithstanding the principles enunciated in these cases, a criminal defendant has a common-law right of access to all

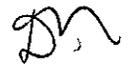
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information relating to his arrest and conviction. See Attorney General Opinion MW-95 (1979). Thus, the information at issue here must be released to the requestor as it comprises information in his criminal file.

Section 3(a)(3) protects from required public disclosure certain information that relates to criminal or civil litigation that is actually pending or reasonably anticipated, but only if withholding the information is required to preserve the government body's strategy or legal interests in the litigation. Open Records Decision No. 478 (1987); 416 (1984). The department claims the investigative material concerning the requestor relates to litigation that may be brought by the requestor since in his request he refers to his desire to seek reversal of his conviction, and since he has not exhausted his appellate and post conviction remedies. This section is not triggered by a mere possibility of litigation at some future date. See Open Records Decision No. 478 (1987); 331 (1982). Nor can section 3(a)(3) be used to defeat a criminal defendant's due process rights to information relating to the crime for which he was prosecuted and convicted. See generally Attorney General Opinion MW-95. Thus, section 3(a)(3) does not protect the information requested here, and it must therefore 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 OR89-328.

Yours very truly,

*Open Government Section
of the Opinion* 

Open Government Section
of the Opinion Committee
Prepared by David A. Newton
Assistant Attorney General

DAN/bc

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