



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 25, 1989

Honorable Val Clark Beard
Brewster County Attorney
P.O. Box 668
Alpine, Texas 79831

Dear Mr. Beard:

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# 7200; this decision is OR89-345.

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.

Brewster County received an open records request for information relating to an alleged beating of a prisoner incarcerated in the Brewster County jail. The requestor asked for any reports of investigations concerning the alleged incident, the names of all persons contacted in regard to the incident, and statements made by jailers, inmates or other knowledgeable persons about the incident. You have submitted as responsive to the request correspondence between the county attorney and the district attorney concerning the allegations, statements from the requestor and witnesses, a complaint from the requestor, who was the recipient of the alleged mistreatment, and a letter dated May 2, 1989, from the United States Department of Justice. The letters between your office and the district attorney do not contain any details about the investigation; they simply request and/or advise whether to proceed on the matter. You include no other investigative materials, reports, statements or affidavits about the incident. In your response to the requestor, you indicate that material

from him, or information that he has already seen, will be made available to him. The county seeks to withhold all other requested information from required public disclosure under section 3(a)(8) of the Open Records Act as information relating to the ongoing investigation of a felony prior to presentation to a grand jury or issuance of an indictment.

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

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. See Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). The Open Records Act places the burden on the governmental body to establish how and why a particular exception applies to requested information. Attorney General Opinion MW-446 (1982); Open Records Decision No. 252 (1980). When section 3(a)(8) is claimed as a basis for excluding information from the public, the governmental body claiming it must reasonably explain, if the information does not supply the information on its face, how and why release of it would unduly interfere with law enforcement. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 287 (1981); 252 (1980).

The information you have submitted as responsive to this request does not on its face indicate how or why its release would unduly interfere with law enforcement efforts in connection with the alleged incident of police brutality. Nor have you demonstrated that release of the information requested would unduly interfere with law enforcement activities. Moreover, neither you nor the documents themselves indicate that an active investigation is ongoing, but only that one is possible or likely. See generally Heard v. Houston Post, 684 S.W.2d 210, 212 (Tex. App. - Houston [1st Dist.] 1984, writ ref'd n.r.e.). Most of the documents you have submitted are not investigatory in nature, consisting in the main of correspondence between the requestor and your office. The statements from the complaining witness and the voluntary statement from a corroborating witness were not generated by any law enforcement agency, but were supplied to your office by the

Honorable Val Clark Beard
October 25, 1989
Page 3

requestor or his representative. Neither they nor the other information you have submitted are excepted from disclosure under section 3(a)(8).

The request for information is also for more information than the documents you submitted to this office for review. The requestor seeks witness statements, investigation reports, names of persons contacted, and inter-departmental memoranda concerning the incident. If your office does not have the requested information, please so inform the requestor and submit an affidavit to this office within five days indicating that you do not have the information requested.

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 OR89-345.

Yours very truly,

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

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Ref.: ID# 7200