



THE ATTORNEY GENERAL
OF TEXAS

MIKE PLATTON
ATTORNEY GENERAL

January 9, 1990

Mr. W.O. Schultz II
General Attorney and Associate General Counsel
The University of Texas System
201 W. 7th St.
Austin, Texas 78701

Dear Mr. Schulz:

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# 6487; this decision is OR90-022.

The University of Texas Medical Branch at Galveston received a request for a copy of an internal audit and an inventory of missing books, manuscripts, and other items of the rare books collection of the university's Moody Medical Library, and for the minutes of a meeting of the UTMB Library Committee. The audit, the inventory, and the library committee meeting minutes relate to an ongoing investigation into the disappearance of valuable books from the Moody Library's rare book collection.

The university contends that the information requested is excepted from disclosure under sections 3(a)(3), 3(a)(8), and 3(a)(11) of the Open Records Act. You indicate that there are actually two audits related to these missing books, one dated February 14, 1989, and another dated February 18, 1988, and that copies of both, as well as the inventory of missing books and the minutes of the Advisory Committee meeting, have been turned over to the UTMB police department and the Galveston County District Attorney's office in order to determine whether theft charges will be brought. You also indicate that the Federal Bureau of Investigation is investigating whether there has been a violation of federal law, specifically the interstate transportation of stolen property. You have submitted a letter from Mr. John M. Lancaster, First Assistant Criminal District Attorney of the Galveston County Criminal District Attorney's Office, in which he indicates that the audits "as well as other materials" concerning an investigation

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regarding the possible theft of rare books were turned over to his office and that the materials are an integral part of a criminal investigation "which could result in formal criminal charges being filed." He states his belief that the materials should not be released as public records as they form "a crucial part of a criminal investigation which could form the basis of criminal litigation."

We have held that in circumstances in which a district attorney is reviewing documents in contemplation of criminal prosecution, litigation against a former employee is likely, and the government body has submitted the documents to the Attorney General's Office for a determination as to possible litigation, requested information may be withheld under section 3(a)(3). See Open Records Decision Nos. 469 (1987), 289 (1981). For requests involving pending litigation, a determination of the relevancy of the requested information is made by reviewing the information in light of the pleadings; where litigation is anticipated, the governmental body may withhold the information if it relates to issues that will arguably arise in that litigation until the exact scope of the issues is determined. See Open Records Decision No. 395 (1983). A determination of how information 'relates' to litigation is far more difficult to decide when the litigation is potential rather than pending, as an extremely broad range of issues might be litigated. See Open Records Decision Nos. 416 (1984); 395.

Here, to judge from the letter submitted by you from the Galveston County District Attorney, the criminal investigation involves theft. The materials requested meet the test of relating to possible litigation as they address an incident involving missing property, the adequacy of library security and inventory control procedures, the discussion of possible suspects and their motives, and possible procedures used or circumvented to perpetuate a theft. To be excepted from disclosure under section 3(a)(3), an adverse effect must attend disclosure of requested information. See Open Records Decision No. 349 (1982). Here, the release of the requested information could adversely affect litigation by tipping off possible suspects or provide information that was compiled to ascertain that a theft had occurred. Release of this information would adversely affect any litigation by revealing, before the production of the evidence to a grand jury, the evidence on which an indictment was to be based, thus subverting the governmental body's interest. The information may therefore be withheld under section 3(a)(3).

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As we conclude that the information sought is excepted from required public disclosure under section 3(a)(3), we do not address your claim that it is also excepted under sections 3(a)(8) and 3(a)(11) of the act. 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 OR90-022.

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

DAN/le

Ref.: ID# 6487

Enclosure: Documents Sent

cc: Steven Long
Feature Writer
Houston Chronicle
P.O. Box 4260
Houston, Texas 77210