



THE ATTORNEY GENERAL
OF TEXAS

JIM BLATTON
ATTORNEY GENERAL

January 22, 1990

Honorable Tim Curry
Criminal District Attorney
Tarrant County, Texas
200 West Belknap Street
Fort Worth, Texas 76196-0201

Dear Mr. Curry:

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# 7373; this decision is OR90-032.

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. Attorney General Opinion H-436 (1974). 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 Tarrant County Criminal District Attorney's Office received an open records request for information relating to a murder-suicide currently under investigation. You claim that sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act protect the requested information from required public disclosure. You also inquire if the request, which cites the federal Freedom of Information Act, 5 U.S.C. § 552a, is a proper means of obtaining information under the Texas Open Records Act. No particular request form or "magic words" are necessary in making an open records

request under the act. As long as the request can be reasonably identified as a request for public information, it is properly construed as a request under the Open Records Act, even though it may not specifically cite the act. See Open Records Decision No. 497 (1988).

We have considered the exceptions you claimed and reviewed the documents you submitted. Your request for an open records decision falls within previous determinations of this office.

Based on a notice of claim letter from an attorney indicating that the victim's children intend to file a claim for death benefits under the Workers' Compensation Act, it may be concluded that litigation is reasonably anticipated. In order for section 3(a)(3) to apply, however, the governmental body must show that withholding the information is necessary to preserve the governmental body's strategy or legal interests in the litigation. See Open Records Decision No. 478 (1987). You have not made such a showing, and therefore the information is not protected from disclosure under section 3(a)(3).

As both the perpetrator and the victim of the crime are dead, there appears to be no possibility of criminal prosecution. Therefore, section 3(a)(8) does not apply, absent a clear showing that disclosure of information in the file would hamper the investigation and prevention of crime. No such showing has been made. See Open Records Decision No. 252 (1980). In reviewing the documents, we do not find information about law enforcement techniques or methodology as such. Release of the kinds of narrative factual information contained in the documents submitted would not disclose law enforcement methodology or techniques that would clearly compromise or hamper future law enforcement efforts. Cf. Open Records Decision No. 413 (1984) (sketch showing prison security measures for future execution excepted from disclosure where release would clearly impair ability of law enforcement agency to maintain necessary order during next scheduled execution.)

The identity of the victim of the hostage-taker's alleged sexual assault must be withheld. See Open Records Decision Nos. 393 (1983); 339 (1982); 205 (1978). Information identifying any such victim has been marked.

The photographs of the crime scene must be released. See Open Records Decision No. 432 (1985) (copy enclosed).

The hostage's letters to her family members may be withheld under section 3(a)(1), because they implicate constitutional and common-law privacy interests in that they contain intimate facts about the private life of the victim's family about which the public has no legitimate interest. See Hubert v. Hart-Hanks Texas Newspapers, 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd n.r.e.).

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 OR90-032.

Yours very truly, 

*Open Government Section
of the Opinion Committee*

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of the Opinion Committee
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Assistant Attorney General

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Ref.: ID# 7373, 7662

Enclosure: ORD-432 (1985)

cc: Jim Douglas
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