



THE ATTORNEY GENERAL
OF TEXAS

JIM BLATTON
ATTORNEY GENERAL

January 25, 1990

Captain Don Doak
Johnson County Sheriff's Department
1800 Ridgmar
Cleburne, Texas 76031

Dear Captain Doak:

We have received your letter of December 1, 1989, addressed to Jennifer Riggs, requesting an Open Records Decision from this office. Your letter has been designated ID# 8329; this decision is OR90-035.

You inform us that you are holding a federal inmate, Mr. Austin James Veleff, under contract with the U.S. Marshall's Office at this time. You have received a request from the Fort Worth Star-Telegram newspaper for a photograph of this inmate. Your letter does not cite any provisions of the Open Records Act that might except this information from 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). However, because of the federal interests in the present case there appear to be compelling reasons for departing from the usual rule of waiver applicable, and for applying section 3(a)(8) of the Open Records Act, the law enforcement exception. See Open Records Decision Nos. 319 (1982); 287 (1981).

In a telephone conversation on January 22, 1990, you stated that the U.S. Marshall's Office has asked you not to give out information about the federal prisoners you are holding. You also said that most of your federal inmates, including Mr. Veleff, are subject to on-going criminal proceedings. Some of them are witnesses in criminal cases, although you do not know the identities of these individuals.

Because of the federal interests in this situation, we will address section 3(a)(8), the exception which we assume the U.S. Marshall's Office would raise, if it had had an opportunity to do so. Open Records Decision No. 127 (1976), a copy of which is enclosed, describes information in law

enforcement files that is excepted from public disclosure under section 3(a)(8) of the Open Records Act. Certain items of information from a prisoner's personal history and arrest record, including mugshots, are excepted from public disclosure. We believe Open Records Decision No. 127 is dispositive of your question, and you need not release the inmate's photograph.

If you have any questions about this letter, please refer to OR90-035.

Yours very truly,
*Open Government Section
of the Opinion Committee*

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of the Opinions Committee
Prepared by Susan Garrison
Assistant Attorney General



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Ref: ID# 8329

Enclosure: ORD-127 (1975)