THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

February 20, 1990

Ms. Mary Ann Courter
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR90-076

Dear Ms. Courter:

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# 8259.

We have considered the exceptions you claimed, specifically sections 3(a)(3) and 3(a)(8), and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 127 (1976), a copy of which is enclosed, resolves your request. For this reason, you may withhold the requested information.

The first exception you claim for withholding the affidavit, section 3(a)(8), excepts from 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.

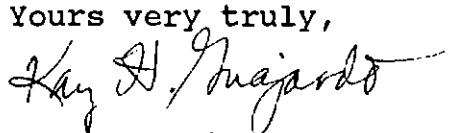
Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975, writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) is the seminal case regarding the availability of arrest related law enforcement information. The holding in that case was summarized in Open Records Decision No. 127 (1976), which set forth lists of information that is closed and open to the public. The list of information not available to the public includes two items pertinent to a determination whether section 3(a)(8) is applicable to the affidavit for arrest: 1) officer's speculation as to the suspect's guilt,

and 2) statements by informants. The affidavit for arrest warrant is a sworn statement of the investigating officer's beliefs as to the guilt of the arrestee and includes the findings that form the basis for that belief. Also, contained within the affidavit are the statements of informants upon which the investigating officer relied to formulate his opinion about the arrestee's guilt. Because the redacted copy of the affidavit contains statements by informants and the investigating officer's beliefs as to the arrestee's guilt, both of which are information not available to the public under Open Records Decision No. 127, it is protected from required public disclosure by section 3(a)(8) of the Open Records Act.

Having determined the affidavit for arrest is not open to the public under section 3(a)(8), it is not necessary to address the second exception you claimed, section 3(a)(3).

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 OR90-076.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref.: ID# 8259

Enclosure: Open Records Decision No. 127

cc: Burke Watson
Assistant Metro Editor
Houston Chronicle
P.O. Box 4260
Houston, Texas 77210