



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

April 2, 1990

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

OR90-127

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# 8350.

You have received a request for copies of "any notes, memorandum, reports, letters or documents" pertaining to the investigation of one individual, now deceased, and the death of another individual. The information you sent for review which concerns the first individual and which is marked as 'Exhibit B' is a criminal history report which contains the fingerprints, signature, aliases and previous arrests of the individual. 'Exhibit C' is a report of the investigation into the death of the second individual. You contend the criminal history report and the investigative file are not required to be disclosed under section 3(a)(8) and 3(a)(1) of the Open Records Act, article 6252-17a, V.T.C.S. Your 3(a)(1) claim is based on 28 C.F.R. section 20.3(b) (1982).

Section 3(a)(8), the "law enforcement exception," excepts from 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.

The only information available under section 3(a)(8) is that held disclosable 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). That case was summarized in Open Records Decision No. 127 (1976). Information that appears on the front page of the offense report is the only information required to be disclosed under section 3(a)(8). Personal history and arrest record information, such as that in 'Exhibit B,' are included on the list of information not available to the public. Thus, you are not required to release 'Exhibit B'. We need not address your section 3(a)(1) and 28 C.F.R. § 20.3(b) claim, as this request is resolved by Open Records Decision No. 127.

Regarding the investigation file of the second individual marked 'Exhibit C,' you state that the death of the individual is still being actively investigated, and that no arrests have been made. You contend public disclosure of the investigative file would jeopardize the investigation by revealing which suspects were ruled out, allowing persons to avoid detection and arrest, disclosing the direction of the investigation, allowing suspects to coordinate their stories, and indicating which direction the investigation was taking. You state the file contains references to polygraph results and criminal history information.

Investigative information may be withheld where its release would "unduly interfere" with law enforcement. See Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). A case by case approach is taken in determining whether public disclosure of law enforcement information would undermine a legitimate interest relating to law enforcement. See Open Records Decision No. 434 (1986). It is our opinion that section 3(a)(8) of the Open Records Act excepts the 'Details' section of the investigative file. When the investigation is of the death of an individual and the investigation has not been closed, but is actively being pursued, the information in the investigatory file is excepted from required public disclosure by section 3(a)(8) of the Open Records Act. See Open Records Decision No. 340 (1982). The investigative officer's 'synopsis' of the incident, however, constitutes public information as does the name of the investigator who filed this report. The last two sentences of the synopsis may be withheld as tending to reveal the department's investigatory efforts. We have marked the report accordingly. See Open Records Decision No. 354 (1982). See also Open Records Decision No. 408 (1984) (officers' narrative summaries are public information unless it is demonstrated that their release would unduly interfere with law enforcement). Therefore, the information in the

'synopsis,' except for its last two sentences, must be released.

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 OR90-127.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref.: ID# 8350.

cc: Lorraine Adams and Dan Malone
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