



THE ATTORNEY GENERAL  
OF TEXAS

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ATTORNEY GENERAL

April 11, 1990

Mr. Michael Anthony Moss  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR90-143

Dear Mr. Moss:

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# 8858.

We have considered the exceptions you claimed, specifically sections 3(a)(3), 3(a)(8), and 3(a)(11), and have reviewed the documents at issue. You submitted for our inspection three files, labeled exhibits A, B, and C. You assert the applicability of section 3(a)(3) only to the information in exhibit C. While you assert, generally, the applicability of the informer's privilege, you do not identify any documents with respect to which you wish to apply the privilege.

You state the information in exhibit A is releasable with the exception of all or part of the following documents:

1. a memorandum dated 1-22-86 from Chief of Police Brown to the City Attorney;
2. a memorandum dated 1-3-86 from the Administrative Disciplinary Committee (ADC) to Chief Brown;
3. a memorandum dated 6-16-87 from Chief Brown to the City Attorney;
4. a memorandum dated 6-10-87 from ADC to Chief Brown;
5. a memorandum dated 12-27-85 from Lt. D. B. Massey to Chief Brown;

6. a memorandum dated 12-19-85 from Sgt. W.G. Roberts to Lt. Massey;
7. a memorandum dated 12-12-85 from Officer Martin to Chief Brown;
8. a memorandum dated 9-23-85 from Capt. S.J. Jones to Chief Brown.

You claim that each of the above, with the exception of item 7, is excepted from public disclosure by section 3(a)(11). You claim that item 7 is excepted from public disclosure by section 3(a)(8). While you indicate that the informer's privilege is applicable to exhibit A, you do not indicate to which information it is applicable or why. Section 3(a)(8), known as 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 purpose for this exception is clear. If a law enforcement agency's internal law enforcement and crime prevention techniques were readily available to the public, those techniques could be rendered ineffective. Release of certain law enforcement information would enable suspects and criminals to evade detection and capture more easily. See Open Records Decision Nos. 133, 127 (1976).

Information is protected by this exception if there is a showing that release of the information would unduly interfere with law enforcement. Open Records Decision Nos. 508 (1988); 333 (1982); 252 (1980).

You do not indicate how the release of item 7 will unduly interfere with law enforcement, nor is it apparent from the face of the document. Item 7 must be released.

Section 3(a)(11) excepts from public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional

process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. See e.g., Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision No. 470 (1987).

The test under section 3(a)(11) is whether inter-agency or intra-agency information consists of advice, opinion, or recommendation that is used in the deliberative process. Facts and written observation of facts and events, when such information is severable from advice, opinion, or recommendation cannot be withheld under section 3(a)(11). Open Records Decision No. 308 (1982).

Items 1 and 3 contain no advice, opinion, or recommendation, and accordingly must be released. The information in the first two paragraphs of item 2 is factual and must be released. The highlighted information in the last two paragraphs of item 2 as well as the highlighted portions of items 4, 5, 6, and 8 may be withheld. All other information in exhibit A must be released.

You state that all the information in Exhibit B is releasable with the exception of portions of the following documents:

1. a letter dated 2-26-85 to Tammy McCloskey;
2. a letter dated 2-26-86 to Julie Turcola;
3. a memorandum dated 2-13-86 from Administrative Disciplinary Committee to Chief of Police Brown;
4. a memorandum dated 1-29-86 from Lt. D. B. Massey to Chief Brown;
5. three memoranda dated 10-18-85 from Capt. S. J. Jones to Chief Brown;
6. a memorandum dated 1-2-86 from Sgt. M. Angel to Lt. D. B. Massey.

You claim each of the above is excepted from public disclosure by section 3(a)(11) of the Open Records Act. You do not indicate the applicability of either the informer's

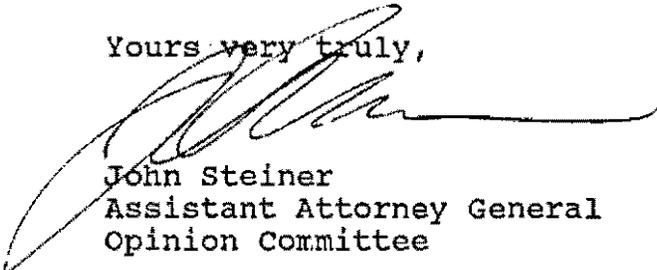
privilege or section 3(a)(8) to any information in exhibit C.

Items 1 and 2, enumerated above, may not be withheld under section 3(a)(11) as they are not inter-agency or intra-agency memoranda. Open Records Decision No. 474 (1987). The first highlighted portion of item 3 is factual information and must be released. Otherwise, the highlighted portions of items 3, 4, and 5 constitute advice, opinion, or recommendation and consequently may be withheld. Item 6 is an investigative report. It consists of facts and observations of facts. It contains no advice, opinion, or recommendation within the scope of section 3(a)(11), and must be released. All other information in exhibit B must be released.

As you advise that litigation is currently pending with respect to the subject matter of exhibit C, it may be withheld during the pendency of the litigation. Of course information in exhibit C is no longer excepted from public disclosure by section 3(a)(3) if it has already been inspected by the other parties to the litigation. Open Records Decision No. 349 (1982).

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 OR90-143.

Yours very truly,



John Steiner  
Assistant Attorney General  
Opinion Committee

JS/le

Ref.: ID# 8858, 8268, 8270, 8298

Enclosure: Marked Documents

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