



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

May 4, 1990

Ms. Kim Richardson
City Attorney
Village of Surfside Beach
P.O. Drawer 915
Freeport, Texas 77541

OR90-170

Dear Ms. Richardson:

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# 7689.

The Surfside Beach Marshal's Department received an open records request for all records relating to the internal investigation of one of the department's officers. The documents you submitted to this office for review fall into two categories: records centering around the arrest and booking of a criminal suspect which include information about the officer's conduct and records concerning various allegations that the officer in question made about certain fellow employees.

We have considered the exceptions you claimed, specifically sections 3(a)(1), 3(a)(2), 3(a)(3), 3(a)(8), and 3(a)(11), and reviewed the documents at issue. This office verified in a telephone conversation with you on March 26, 1990, that all criminal litigation surrounding the incident described in the first group of documents has been concluded and that all controversies concerning alleged civil rights violations have been settled. Consequently, litigation relating to this incident is no longer anticipated and section 3(a)(3) is not applicable in this instance.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, see Open Records Decision Nos. 455 (1987); 325 (1982), we will raise exceptions that are intended to protect information deemed confidential by law because the release of such information could impair the rights of third parties and because its improper release constitutes a misdemeanor. See V.T.C.S. art. 6252-17a,

§ 10(e). The tape recording submitted to this office contains the home telephone number of a police officer; this information must be withheld. See Open Records Decision No. 532 (1989).

This office has previously held that section 3(a)(8) of the Open Records Act may in certain instances protect from required public disclosure police officers' statements given during the course of an internal investigation in order to protect the identity of the witnesses and to insure cooperation in future investigations. See Open Records Decision No. 297 (1981). In this instance, however, the officer under investigation has been given copies of most, if not all, of the other officers' statements against him. Section 3(a)(8) does not protect any statements supplied to the officer in question. Cf. Open Records Decision No. 202 (1978) (once the identity of an informer has been disclosed to those who would have cause to resent the communication, the informer's privilege is no longer applicable). You may, however, withhold all statements not released to the officer pursuant to section 3(a)(8). None of the remaining information contained in the file comes under the protection of this exception.

Open Records Decision No. 313 (1982) governs your request with regard to section 3(a)(11). We have marked those portions of the investigative file that you may withhold pursuant to section 3(a)(11). The file also contains a letter that was apparently written in defense of the officer under investigation. If these comments were solicited by the department during the investigation, you may withhold the information that we have marked as being protected by section 3(a)(11); otherwise the letter must be released in its entirety. See Open Records Decision Nos. 466 (1987); 283 (1981).

The test for section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1): to be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd n.r.e.). Portions of the investigative file implicate the privacy rights of private citizens as well as police officers. We marked the information that you may withhold pursuant to the common-law right to privacy.

The investigative file contains numerous scurrilous allegations that various officers have made against each other. A governmental body must withhold information under section 3(a)(1) on the basis of "false light" privacy only if it finds that release of the information would be highly offensive to a reasonable person, that public interest in disclosure is minimal, and that serious doubt exists about the truth of the information. Open Records Decision No. 438 (1986); but see Open Records Decision No. 400 (1983) (details of investigation of allegations eventually found to be untrue are not protected by false light privacy) (copy enclosed).

One of the purposes of the internal investigation was to determine whether the officer in question actually made certain statements; Open Records Decision No. 400 governs this aspect of the investigation. The substance of the allegations themselves are of no legitimate public interest only if the allegations are untrue. You have not, however, expressed whether the village has "serious doubt" about the allegations made by the officer. Based on the evidence submitted to this office, we cannot hold that the requirements for false light privacy protection have been met. We are returning the investigative file to you. Please indicate exactly which allegations village has such doubts by marking and returning the file to this office within ten days of receipt of this letter. All other information not held to be excepted from required public disclosure must, however, be released at this time.

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 OR90-170.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/le

Ref.: ID# 7689, 7473

Enclosures: Open Records Decision Nos. 400, 323

cc: John Toth, Reporter
Houston Chronicle