



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

May 11, 1990

Mr. Robert P. Rose
Assistant City Attorney
City of Austin
Police Department
P.O. Box 1088
Austin, Texas 78767-8828

OR90-181

Dear Mr. Rose:

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# 8265.

The Austin Police Department received an open records request for copies of "the investigative and administrative files" concerning two named former police officers. You have submitted to this office for review the officers' personnel files and the department's internal affairs files that detail the investigation of allegations against the officers. You contend that sections 3(a)(1), 3(a)(8), and 3(a)(11) of the Open Records Act protect these files from required public disclosure. You may withhold from both of the officers' files performance evaluations pursuant to section 3(a)(11), see Open Records Decision No. 538 (1990), and all criminal history information pursuant to section 3(a)(8). Open Records Decision No. 127 (1976). You should also withhold all medical records, including computer print-outs of the drug screening tests, pursuant to section 5.08(b) of article 4495b, V.T.C.S., as well as any information tending to reveal the results of drug screening tests pursuant to the common-law right to privacy. See Open Records Decision No. 370 (1983).

The records relating to one of the officers includes an internal affairs investigation of allegations that the officer sexually assaulted a child. You should withhold all narrative portions of offense reports, the statement of the officer in question, and all other witness statements pursuant to the common-law privacy and informer's privilege aspects of section 3(a)(1). See Open Records Decision Nos.

393 (1983); 49 (1974). We have marked other information to be withheld that tends to identify the assaulted child or that implicates the privacy of third parties. None of the remaining information contained in this officer's files comes under the protection of the other exceptions you raise and must therefore be released at this time.

The other officer's files contain information relating to the internal affairs investigation of the officer's violation of the civil rights of a prisoner in his custody. You contend that fellow officers' statements made during the investigation should be withheld pursuant to section 3(a)(8), otherwise "the officers who are subject to these investigations will likely be less candid with [future] internal investigations." This aspect of your request is governed by Open Records Decision No. 350 (1982), which held that whether the release of such statements would interfere with future investigations must be determined on a case-by-case basis.

In this instance, several of the statements made by fellow officers do not contain any allegations against the officer in question; the release of this type of statement would not unduly interfere with future investigations. The identities of some of the officers who made incriminating statements and the content of those statements were made known to the officer under scrutiny. The department therefore waived any legitimate law enforcement interests for withholding these statements when the content of the statements was revealed to the officer under investigation. 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 only withhold, pursuant to section 3(a)(8), any incriminating statements not revealed to the officer in question. None of the remaining information pertaining to this officer comes under the protection of section 3(a)(8).

You did not mark the documents pertaining to this officer to show which specific information you contend comes under the protection of section 3(a)(11). Your burden under section 7(a) of the act is to request a decision on whether specific information is within specific exceptions. A claim that an exception applies with no explanation of why it applies will not suffice. Attorney General Opinion H-436 (1974). We are returning to you the documents you submitted for review relating to the former officer. Please resubmit these documents with markings to indicate the specific documents or portions thereof you contend are protected by

section 3(a)(11). You have 10 days from receipt of this letter in which to resubmit the documents at issue. Otherwise, the information 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 OR90-181.

Yours very truly,



David A. Newton
Assistant Attorney General
Opinion Committee

DAN/RWP/le

Enclosures: Marked documents

Ref.: ID# 8265

cc: Lorraine Adams
Staff Writer
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