



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

June 15, 1990

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

OR90-237

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# 9038.

The Department of Public Safety received a request from an attorney for information relating to the death of his client's son while in the custody of the Hardeman County Jail. The requestor seeks all information that relates to the arrest, detention, death, and investigation into the death of his client's son. You submitted to this office for review a lengthy investigative report compiled concerning this custodial death. You claim that the report may be withheld from required public disclosure under sections 3(a)(3) of the act because the department alleges that the decedent's father made accusations against DPS employees about his son's death, and therefore, the department anticipates it will be sued over the incident. You also claim the information is protected under section 3(a)(8). You claim that the custodial death report filed by the county sheriff's office with the Attorney General's Office, a copy of which is included in the investigative report, is excepted under article 49.18, Code of Criminal Procedure as incorporated by section 3(a)(1), because release of that report is determined by the Attorney General.

We have considered the exceptions you claimed, specifically sections 3(a)(1), 3(a)(3) and 3(a)(8), and have reviewed the documents at issue. We conclude that the department may reasonably anticipate litigation involving the records at issue here, and that therefore all of the information may be withheld pursuant to section 3(a)(3). See Open Records Decision No. 551 (1990). See also Open Records Decision No. 521 (1989) (the first part of the

custodial death report is available from the Attorney General). For this reason, we do not address the applicability of the other sections you cite.

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 OR90-237.

Yours very truly,



David A. Newton
Assistant Attorney General
Opinion Committee

DAN/le

Ref.: ID# 9038

Enclosure: Documents Submitted

cc: Stephen R. Bjordammen
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