



THE ATTORNEY GENERAL
OF TEXAS

JIM SLATTON
ATTORNEY GENERAL

June 15, 1990

Honorable Richard Barajas
District Attorney
83rd Judicial District
P.O. Box 639
Fort Stockton, Texas 79735

OR90-246

Dear Mr. Barajas:

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# 8337.

You received a request for records concerning three different incidents. Since the records are voluminous, we asked you to defer sending them until we asked you to. After reviewing your descriptions of the records and your arguments about the exceptions applicable to them, we have found that we can determine the application of the Open Records Act to some of the records as a matter of law, without examining the records. However, we will need to examine other records to determine how the Open Records Act applies to them.

The first set of records relates to the death of a justice of the peace. A private inquest was held pursuant to article 49.14(d) of the Code of Criminal Procedure and the presiding judge ordered that all records of the inquest be delivered to the district clerk and sealed pursuant to article 49.15(d) of the Code of Criminal Procedure. The clerk of the district court is to retain the report subject to an order by the district court. We agree that these records are excepted from public disclosure by sections 3(a)(1) and 3(a)(7) of the Open Records Act. See Open Records Decision No. 349 (1982).

The second set of records relates to an alleged shooting on the Rio Grande River which is under investigation by your office in conjunction with the grand jury of Presidio County. You claim that sections 3(a)(1), 3(a)(3), and 3(a)(8) are applicable to the records. Information in the actual or constructive possession of the grand jury is

excepted from public disclosure. Open Records Decision Nos. 513 (1988); 398 (1983). Thus, information obtained pursuant to grand jury subpoena or at the direction of the grand jury is excepted from disclosure. Any other information in your file must be sent to us with a statement of reasons why the cited exceptions apply.

The third set of records relates to a shooting in which one person was killed and two persons wounded. One investigation of the entire incident was made. An individual has been convicted of murder in the death case, but he still faces two counts of attempted murder in connection with the two persons who were wounded. You claim that sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act are applicable and state that "[u]nder Texas Law, even a defendant is not entitled to examine the entire contents of a prosecutor's file." See Code Crim. Proc. art. 39.14.

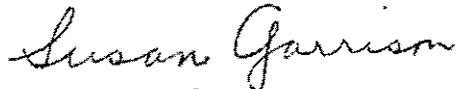
You have shown that criminal litigation is reasonably anticipated in this case. However, section 3(a)(3), the litigation exception, does not apply to any information already made available to the opposing party in pending or anticipated litigation. Open Records Decision No. 349 (1982). Records made available to the defendant in his trial on the murder charge are not excepted from disclosure by section 3(a)(3) despite the anticipated litigation in the two cases of attempted murder. Moreover, the decision to withhold information under section 3(a)(3) is subject to review by the attorney general to establish that the subject matter of the requested information is reasonably related to the litigation. Open Records Decision No. 551 (1990). Thus, we need to see the records of the investigation in this case, or representative samples, to evaluate your argument under section 3(a)(3).

Nor can we address your claims under section 3(a)(1) and section 3(a)(8) at the present time. Section 3(a)(1) applies to "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You have not identified any statute or constitutional provision, common law rule, or judicial decision that would make the records of the investigation confidential. Nor have you identified a law enforcement interest that would apply to this file, and in the absence of the records, we are unable to determine the law enforcement interest from the face of the records. Accordingly, when you send us copies of the records in this file, please identify the law that deems the information confidential under section 3(a)(1) and mark or otherwise identify the records that are excepted by this section. In addition, please let us know the nature of the

law enforcement interest protected by section 3(a)(8) and identify the records covered by it. We will then issue another ruling addressing this investigative report.

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 OR90-246.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/le

Ref.: ID# 8337

Enclosure: Open Records Decision Nos. 349, 398, 513

cc: Jack D. McNamara
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