



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

June 22, 1990

Mr. T.O. Bartholow, Jr.
Hutchinson Boyle Brooks & Fisher
Attorney for Farmers Branch, Texas
3900 First City Center
Dallas, Texas 75201-4622

OR90-267

Dear Mr. Bartholow:

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# 8827.

We have considered the exceptions you claimed, specifically sections 3(a)(1), 3(a)(3), 3(a)(8), and 3(a)(11), and have reviewed the documents at issue.

You advise that the city of Farmer's Branch "has no knowledge of . . . whether litigation is contemplated or pending." The Open Records Act places on the custodian of records the burden of demonstrating that records are excepted from disclosure. Attorney General Opinion No. H-436 (1974). Accordingly, we have no basis on which to consider your claim of exception under section 3(a)(3).

You advise that "[e]xcept for two cases in which supplemental reports were made stating the cases were inactive, the City has no actual knowledge of whether the detection, investigation or prosecution by the state or other political subdivisions of any of the crimes alleged is still active." You assert that "[the requestor] should be requesting the information from the state or other political subdivision that is in charge of the detection, investigation or prosecution."

Nothing in the Open Records Act requires a requestor to direct a request to any specific governmental body among those which may be maintaining a particular record. As the request has been directed to the City of Farmers Branch, the city bears the burden, as noted above, of demonstrating that the information is excepted from public disclosure. With

respect to inactive investigations, the standard for exception under section 3(a)(8) is whether the release of the information will unduly interfere with law enforcement and crime prevention. Attorney General Opinion MW-446 (1982). You have not shown, nor is it apparent, how the release of the requested information will unduly interfere with law enforcement.

To be excepted from public disclosure by common-law privacy information must (1) contain highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) not be of legitimate concern to the public. Industrial Found. of the South v. Texas Indus. Accident Board., 540 S.W.2d 668. (Tex. 1976), cert denied, 430 U.S. 930 (1977). The following must be withheld under the common-law privacy aspect of section 3(a)(1):

1. memorandum dated 9-17-85, Turland to Wagner.
2. personnel complaint filed 3-16-84.
3. memorandum dated 9-17-85, Turland to Wagner.
4. letter dated 7-11-85 from Texas Department of Human Resources.
5. statement by Leo Martinez dated 4-21-88.
6. marked portions of the investigation report relating to the personnel charges against Leo Martinez.

Section 3(a)(11) excepts advice, opinion or recommendation used in the deliberative process. Factual information, where severable, is not excepted by section 3(a)(11). Open Records Decision No. 559 (1990). The following may be withheld under section 3(a)(11):

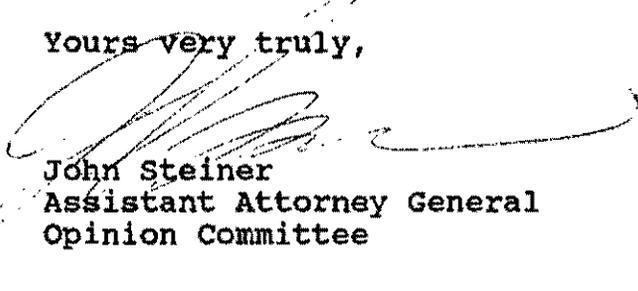
1. marked portions of the investigation report relating to the personnel charges against Leo Martinez.

The balance of the requested 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 OR90-267.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/le

Ref.: ID# 8827, 9398

Enclosure: Marked Documents
Documents Submitted.

cc: Lorraine Adams & Dan Malone
Staff Writers
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