



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

July 5, 1990

Honorable Scott W. Johnson
Reeves County Attorney
P.O. Box 749
Pecos, Texas 79772

OR90-278

Dear Mr. Johnson:

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# 9906.

The Pecos Police Department received an open records request for the police reports of three named officers who responded to a disturbance that occurred on January 15, 1990, at Lamar Elementary School, and all related witness statements. Although two individuals filed complaints as a result of the incident, the two complainants later dropped the criminal charges against each other by executing an "Affidavit of Non-Prosecution." You contend that because the two complainants agreed to settle this matter without court intervention, the release of the requested information would result in an invasion of the complainant's privacy and invoke the protection of section 3(a)(1) with regard to this information. You also contend that section 3(a)(3) and section 3(a)(8) protect this information.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common law right to privacy. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. Id. at 683-85.

When an individual alleges criminal activities by filing a criminal complaint, however, any expectation of privacy with regard to those allegations is normally waived unless the allegations consist of "highly intimate or

embarrassing" information. See Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (identity of complainant and detailed description of offense is normally public information). We have marked small portions of the two witness affidavits and the "Supplementary Offense Report" that you may withhold pursuant to the common-law right to privacy. None of the remaining information may be withheld pursuant to section 3(a)(1).

To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision Nos. 452 (1986); 360 (1983). The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision No. 328 (1982). You have not shown that the requested material meets this initial test; consequently you may not withhold this information pursuant to section 3(a)(3).

Whether section 3(a)(8), known as the "law enforcement" exception, applies to particular records depends on whether their release would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986); 287 (1981). In this instance, there is no on-going criminal investigation, nor do you indicate that a subsequent investigation is anticipated at this time. The mere fact that the statute of limitations has not run with regard to the criminal allegations contained in the complaints is not sufficient to invoke the protection of section 3(a)(8). Consequently, you may only withhold those portions of the requested information that we have marked as coming under the protection of section 3(a)(1); all of the remaining 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 OR90-278.

Yours very truly,



David A. Newton
Assistant Attorney General
Opinion Committee

DAN/RWP/le

Ref.: ID# 9906, 8901, 9407

Enclosure: Marked Documents

cc: Peggy McCracken
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