



THE ATTORNEY GENERAL  
OF TEXAS

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ATTORNEY GENERAL

July 9, 1990

Mr. Gary Keane  
Legal Counsel  
Dallas/Fort Worth International  
Airport  
P.O. Drawer DFW  
Dallas/Fort Worth Airport, Texas 75261

OR90-292

Dear Mr. Keene:

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# 6313.

The Dallas/Fort Worth International Airport Board received two requests for information by telephone. Ordinarily, a governmental body is required to request a decision of this office pursuant to subsection (a) of section 7 of the Open Records Act only upon receipt of a written request for information. However, since the airport board has chosen to formally request a decision of this office on this matter, we will address the matter accordingly. Cf. Open Records Decision No. 542 (1990).

The requests for information were for "all DPS reports relating to" an automobile accident resulting in the death of an airport board employee and the arrest of the driver of the vehicle striking the employee. Acting on the advice of the Tarrant County Assistant District Attorney prosecuting the case, you claim section 3(a)(3) as an exception to required public disclosure of all materials in the possession of the board relating to the case.

Section 3(a)(3) of the Open Records Act excepts

information relating to litigation of a criminal or civil nature . . . to which the state or political subdivision is, or may be, a party . . . that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(e) provides that for the purposes of section 3(a)(3) the state or political subdivision is considered a party to criminal litigation "until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court."

The first two documents are the "Texas Peace Officer's Accident Report" and the "Texas Peace Officers Accident Casualty Supplement" prepared by the officer investigating the accident. Reports of this kind are made public by section 47 of article 6701d, V.T.C.S., and need not be obtained from the Texas Department of Public Safety when the contents of the report in the possession of the local law enforcement agency are identical. See Open Records Decision Nos. 251 (1980); 43 (1974). Section 3(a)(3) does not close information that is made public by a statute other than the Open Records Act. See Open Records Decision Nos. 146 (1976); 43. The copies of the reports in the possession of the airport board are therefore subject to disclosure.

The remaining documents consist of reports and statements compiled by the Dallas/Fort Worth International Airport Department of Public Safety in connection with the arrest of the driver of the vehicle involved in the fatal accident and its investigation of the accident.

In 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), the court held that certain information compiled by law enforcement agencies relating to arrests was not excepted from disclosure by section 3(a)(8) of the Open Records Act. This decision was made with the knowledge that many, if not most, of the arrests would result in criminal litigation in which the state or political subdivision would be a party. Thus, we do not believe that the information declared public by the court may be withheld pursuant to section 3(a)(3) by virtue of the possible prosecution of the case against the driver of the vehicle involved in the fatal accident.

The categories of information that may and may not be withheld following the Houston Chronicle decision were summarized in Open Records Decision No. 127 (1976) (copy enclosed). We have marked the items submitted for our inspection to show the information that must be disclosed to the requestor. Public disclosure of the written statements of two witnesses and the driver charged in the accident is not required by either the Houston Chronicle case or section 3(a)(3). The arrest warrant affidavit presented by an

officer of the airport department of public safety, the emergency medical report prepared by attending paramedics, and the case report prepared in anticipation of prosecution clearly "relate" to the anticipated criminal litigation and therefore may be withheld pursuant to section 3(a)(3). See Open Records Decision No. 551 (1990).

Because case law and prior published open records decisions resolve your request, we have elected to respond to your inquiry with this informal letter ruling rather than with a published open records decision. We apologize for any inconvenience the considerable delay in responding to this matter may have caused you or the requestor. If you have any questions about this ruling, please refer to OR90-292.

Yours very truly,



Steve Aragón  
Assistant Attorney General  
Opinion Committee

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Ref.: ID# 6313

Enclosure: Open Records Decision No. 127  
Marked Documents