



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 30, 1990

Ms. Mary Ann Courter
Assistant General Counsel
Texas Department of Public Safety
5805 N. Lamar Blvd.
Box 4087
Austin, Texas 78773-0001

OR90-346

Dear Ms. Courter:

You ask whether certain information in several Department of Public Safety internal affairs files is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 8783.

The files you provided us include information about the department's investigations of complaints against peace officers.¹ You seek to withhold some of the information under various exceptions to the Open Records Act, article 6252-17a, V.T.C.S. We note, however, that you do not raise section 3(a)(8), which would allow you to withhold records if their release would unduly interfere with law enforcement.

1. After your initial request for a determination from this office, you wrote to us stating that you had identified several other files that were responsive to the request. You did not provide those records to us because you determined that the files you had provided to us were representative of all the files that had been requested. You should release or withhold the material in those files in accordance with this decision.

You suggest that the complaints should be withheld under section 3(a)(1) because of "false light" privacy. The complaints in each file state that an officer used excessive force. Even though the complaints may be unfounded, these complaints do not fall within the scope of the "false light" privacy doctrine. See Open Records Decision Nos. 400, 390 (1983). You also raise section 3(a)(2). We find nothing in the files that should be withheld under section 3(a)(2).

You also argue that certain medical records should be withheld in accordance with section 5.08 of the Medical Practice Act, article 4495b, V.T.C.S. The only medical record we have found in the material you provided us was prepared by ambulance personnel. Section 5.08 applies only to records prepared or maintained by a physician. Open Records Decision No. 262 (1980). Further, the information on the record is not so intimate that it is protected by the common-law right of privacy. Id.

Section 3(a)(1) does, however, require you to withhold the information marked with tab # 3. United States v. Napper, 887 F.2d. 1528 (11th Cir. 1989); see Open Records Decision No. 561 (1990). We have also marked portions of the documents in the Ramos file that should be withheld because of the common-law privacy interests of the prisoner involved. Open Records Decision No. 262 (1980).

Some of the records concern an encounter between peace officers and several juveniles. Those records must be withheld. Fam. Code § 51.14(c), (d); Open Records Decision No. 181 (1977).

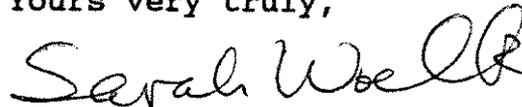
You describe some of the documents as "witness statements." Apparently you seek to withhold those documents under the "informer's privilege" as incorporated by section 3(a)(1). The documents you identify as "witness statements" are statements made by law enforcement personnel in regard to the incidents that gave rise to the complaints. We find no prior decision in which the informer's privilege has been applied in that type of situation. Therefore, you may not withhold the statements under the informer's privilege. Some of the statements do, however, contain opinion. Those portions, which we have marked, may be withheld under section 3(a)(11).

An assistant attorney general has stated that some of the information requested is relevant to litigation pending against the department. You may withhold that information under section 3(a)(3). Open Records Decision No. 551

(1990). Information that has already been released in discovery, however, may not be withheld unless some other Open Records Act exception applies. Id.

We have marked several documents prepared by counsel for the department that you may withhold under section 3(a)(7). You may withhold the home addresses and phone numbers of peace officers. V.T.C.S. art. 6252-17a, § 3(a)(17). If you have any questions regarding this ruling, please refer to OR90-346.

Yours very truly,



Sarah Woelk
Assistant Attorney General
Opinion Committee

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Ref.: ID# 8783, 7475, 7595

Enclosures: Marked Documents

cc: Ron Shortes
Assistant Attorney General
Enforcement