



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

October 25, 1990

Ms. Rosalinda Garcia
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002

OR90-492

Dear Ms. Garcia:

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# 10538.

We have considered the exception you claimed, sections 3(a)(2), 3(a)(3), and 3(a)(7) specifically, and have reviewed the documents at issue. You have received a request for information from the personnel file of a County Health Department employee. The brief of an assistant district attorney indicates that this employee is a potential witness in two pending criminal cases, as well as being a witness in two pending justice of the peace court cases. Furthermore, the defense counsel in the criminal cases, one of whom is the requestor, have filed discovery motions for production of the employee's personnel file. The assistant district attorney in charge of the criminal cases has informed us that the judge in the criminal case authorized the release of a summary of the records at issue last month, but did not allow the release of the records themselves.

Section 3(a)(3) allows exception for

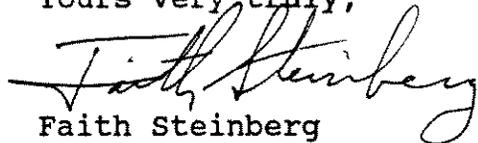
information relating to litigation of a civil or criminal nature . . . to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general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

Prior decisions of this office have held that the exception is applicable to criminal actions where the state is a party in its role as prosecutor, and the district attorney in charge of the case has determined that the

documents sought should be withheld. See Open Records Decision Nos. 469 (1987); 141, 121 (1976). Accordingly, we find that the section 3(a)(3) exception requirements are met in this case: litigation to which the state is a party is pending, and the information requested relates to the litigation. Open Records Decision No. 551 (1990). The fact that the requestor sought these documents through discovery establishes their relatedness to the pending trials. Our decision rests upon our understanding that only a summary or partial summary of the documents' contents has been released; any documents actually released under the judge's decision would fall outside the exception. Id. (citing Open Records Decision No. 454 (1986)).

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 OR90-492.

Yours very truly,



Faith Steinberg
Assistant Attorney General
Opinion Committee

FS/le

Ref.: ID# 10538

Enclosure: Open Records Decision Nos. 551, 141

cc: David Singer
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