



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 25, 1990

Mr. Merrill E. Nunn
City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79186

OR90-514

Dear Mr. Nunn:

By letter of September 4, 1990, you referred to us a request under the Texas Open Records Act, article 6252-17a, V.T.C.S., for documents held by the Amarillo Police Department concerning the arrest, prosecution, conviction, and subsequent civil rights suit of Marlon Eugene Bailey. The request was made by Mr. Bailey. We have designated your letter ID# 10579.

The requestor has sued the City of Amarillo and one of its police officers for the events of his arrest in Marlon Eugene Bailey v. City of Amarillo and Shawn McLeland, No. CA-2-90-0052 (N.D. Tex.). His request is set out as a motion in this case requesting production of records pursuant to the Open Records Act. You are treating his request as both a request under the Open Records Act and a request for production of documents. We can assume, based on Mr. Bailey's attempt to discover these records in his civil rights suit and on statements in your letter, that the documents are relevant to that litigation.

We have considered the exemption you claim, section 3(a)(3) of the Open Records Act, and have concluded that it permits you to withhold the records in question, except for those that Mr. Bailey has already had access to in connection with his criminal prosecution or otherwise. See Open Records Decision No. 551 (1990). With this exception, you may withhold the requested records.

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 OR90-514.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/le

Ref.: ID# 10579

Enclosure: Open Records Decision No. 551

cc: Marlon Eugene Bailey
Potter County Correction Center
P.O. Box 36500
Amarillo, Texas 79120-6500