



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

November 6, 1990

Mr. Michael Anthony Moss  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR90-535

Dear Mr. Moss:

You ask whether certain records are subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10360.

You state that the records in question relate to a criminal case that has "proceeded up through the various state courts, including an appeal to the Texas Court of Criminal Appeals." You note that all federal appeals remain available to the defendant. Therefore, you seek to withhold the records under section 3(a)(3) of the Open Records Act, which allows a governmental body to withhold

information relating to litigation of a criminal or civil nature and settlement negotiations, 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.

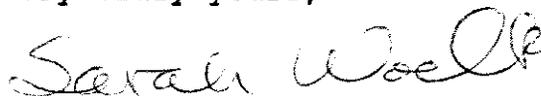
In a phone call on September 28, 1990, I explained to you that it is the responsibility of the prosecuting attorney to determine whether information related to criminal litigation should be withheld under section 3(a)(3). Open Records Decision No. 121 (1976). See Open Records Decision Nos. 551 (1990); 382 (1983). You stated that you would inform the district attorney of the city's desire to withhold the records. Because the district attorney has not claimed

section 3(a)(3) in regard to this request, you may not withhold the information under section 3(a)(3).

You also raise section 3(a)(8), which allows a governmental body to withhold information that would "unduly interfere with law enforcement." See generally Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). You have not offered any explanation of how release of the information in question would interfere with law enforcement. Therefore, you may not withhold the information under section 3(a)(8).

If you have any questions on this matter, please refer to OR90-535.

Very truly yours,



Sarah Woelk  
Assistant Attorney General  
Opinion Committee

SW/le

Ref: ID# 10360, 10385, 10593

cc: Dr. George T. Burt  
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Palestine, Texas 75801