



**Office of the Attorney General**

**State of Texas**

**November 27, 1991**

**DAN MORALES**  
ATTORNEY GENERAL

**Ms. Rosalinda Garcia**  
**Assistant County Attorney**  
**Harris County**  
**1001 Preston, Suite 634**  
**Houston, Texas 77002-1891**

**Open Records Decision No. 597**

**Re: Whether the front page of an offense report prepared by the sheriff's department may be excepted from disclosure by section 3(a)(3) of the Open Records Act (RQ-23)**

**Dear Mr. Driscoll:**

You have asked for an open records decision in regard to two requests submitted to the Harris County Sheriff by the same requestor. The requestor sought information about jail rules and policies, any handbooks or rules distributed to prisoners, information about the escape of a certain prisoner, and information about any disciplinary actions against jail personnel related to that escape.

You have submitted to this office copies of documents responsive to that request that you seek to withhold from the requestor. You cite section 3(a)(3) of the Open Records Act, article 6252-17a, V.T.C.S., as a basis for withholding all of the information. Under section 3(a)(3) a governmental body may withhold from public disclosure information relating to criminal litigation. You inform us that criminal litigation is pending against two individuals in regard to the escape from the Harris County jail. Most of the information you have submitted relates to that litigation and may therefore be withheld either until the defendant obtains the information or until the litigation has ended. *See generally* Open Records Decision No. 551 (1990) (discussing application of section 3(a)(3)); V.T.C.S. art. 6252-17a, § 3(e) (clarifying when litigation ends).<sup>1</sup> Two of the items, however, may not be withheld under section 3(a)(3).

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<sup>1</sup>You cite sections 3(a)(8) and 3(a)(11) as separate bases for withholding portions of the information. We have marked the information that may be withheld under those sections. You may withhold that information even after section 3(a)(3) is no longer available.

One of those items is a manual titled "Harris County Jail Inmate Handbook." The handbook bears no apparent relationship to the criminal litigation in question, and you have offered no explanation of any such relationship. Also, the handbook is addressed to inmates and apparently distributed to inmates during their incarceration in the Harris County jail. The defendants in the pending criminal litigation were, at least at one time, inmates of the Harris County jail and presumably had access to the handbook. Section 3(a)(3) does not allow a governmental body to withhold information that has already been made available to the other party to the litigation. See Open Records Decision No. 551 (1990).

The other item that the sheriff may not withhold under section 3(a)(3) is the front page of the offense report, which contains information regarding the escape. The availability of information in offense reports has been the subject of numerous court cases and attorney general opinions. *Houston Chronicle Pub. Co. v. City of Houston*, 508 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) (hereinafter *Houston Chronicle I*); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. Ct. App.--Houston [1st Dist.] 1985, no writ); Open Records Decisions Nos. 127, 134 (1976), 164, 181 (1977), 216 (1978), 339 (1982), 362, 1366 (1983). Although the reasoning has not been uniform, those decisions have consistently held that the following basic information in offense reports is generally available to the public<sup>2</sup>: the offense committed, location, identification and description of complainant, premises, time of the occurrence, property involved, vehicles involved, weather, details of the offense in question, and the names of the investigating officers.<sup>3</sup>

One of those opinions, Open Records Decision No. 362, specifically held that basic information in an offense report could not be withheld under section 3(a)(3). A subsequent judicial decision, however, considered the application of section 3(a)(3) to basic information in an offense report. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. Ct. App.--Houston [1st Dist.] 1985, no writ). Although the court

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<sup>2</sup>This office has recognized exceptions for names of victims of sexual offenses, Open Records Decision No. 339 (1982) and for information regarding arrests for narcotics offenses where release of the information would unduly interfere with law enforcement, Open Records Decision No. 362 (1983).

<sup>3</sup>The information on the front page of the offense report you have submitted is the type of information held to be available to the public.

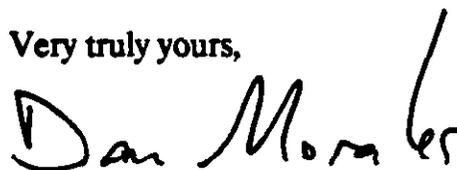
concluded that section 3(a)(3) was not applicable to the facts before it,<sup>4</sup> its willingness to consider 3(a)(3) on the merits indicates that the court might not share the view expressed in *Open Records Decision No. 362* that section 3(a)(3) could not be a basis for withholding basic information in an offense report.

Even if, as *Heard* suggests, section 3(a)(3) may in some instances provide a basis for withholding basic information in an offense report, we conclude that it does not do so here. Soon after a suspect is arrested, he is to be brought before a magistrate who must inform him of the nature of the charge against him, and the *magistrate must inform him of affidavits filed in regard to the charge.* Code Crim. Proc. §§ 1406, 15.17. Also, an indictment must be sufficient to give notice of the particular charges against a defendant. *Id.* ch. 21. In this case, there is no information in the basic offense report that would not have been made known to the defendants either by a magistrate or in an indictment. Because section 3(a)(3) does not allow a governmental body to withhold information that has already been made available to the other party in litigation, the basic information in the offense report must be made available to the requestor.

### SUMMARY

Section 3(a)(3) cannot be invoked to withhold from public disclosure basic information in an offense report that has already been made available to the defendant in the criminal litigation.

Very truly yours,



DAN MORALES  
Attorney General of Texas

WILL PRYOR  
First Assistant Attorney General

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<sup>4</sup>The court responded to the section 3(a)(3) claim by stating that there was no evidence that litigation was reasonably anticipated in regard to the offense report at issue. Thus, the specific ruling of *Heard* is that an arrest is not by itself sufficient to raise a reasonable anticipation of litigation.

**MARY KELLER**

**Deputy Assistant Attorney General**

**JUDGE ZOLLIE STEAKLEY (Ret)**

**Special Assistant Attorney General**

**RENEA HICKS**

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**MADELEINE B. JOHNSON**

**Chair, Opinion Committee**

**Prepared by Sarah Woelk**

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