



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

April 8, 1991

Honorable Mike Driscoll
County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR91-165

Dear Mr. Driscoll:

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# 11837.

The Harris County Constable of Precinct 5 received an open records request from a former deputy constable for the contents of the former deputy's personnel file and documents pertaining to all investigations against the deputy conducted by Internal Affairs. You seek to withhold portions of the requested documents pursuant to sections 3(a)(8) and 3(a)(11) of the Open Records Act. This office appreciates your efforts to mark the documents to show which exceptions apply to specific information.

Section 3(a)(11) excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's deliberative process. Open Records Decision No. 464 (1987) overruled on other grounds by Open Records Decision No. 538 (1990) (copies enclosed). Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). This office agrees that you may withhold the information that you have marked as coming under the protection of section 3(a)(11).

Whether section 3(a)(8) applies to particular records depends on whether their release would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986); 287 (1981). One of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. See Open Records Decision Nos. 133, 127

(1976). In this regard we reaffirm our ruling in Open Records Letter OR90-407 (1990) that section 3(a)(8) protects the "response time" to calls for assistance to the constable's office.

Please note, however, that whether disclosure of particular records will unduly interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). One reason for withholding names of witnesses, despite the absence of a criminal prosecution, is that disclosure might subject the witnesses to intimidation or harassment. Open Records Decision No. 252 (1980) (copy enclosed). Where investigations are closed, however, this factor must be examined on a case by case basis before governmental bodies may withhold such information. Because part of the purpose of withholding a witness's name is to prevent retaliation, section 3(a)(8) does not protect a witness's identity when this information is known to the party complained of. See Open Records Decision No. 208 (1978) (copy enclosed).

It is clear from the contents the two internal investigation reports dated October 13, 1989 and January 3, 1990, that the deputy was made aware of the identities of those who made allegations against him; section 3(a)(8) does not protect the names of these two complainants. On the other hand, if the identity of the citizens who complained about the response time of the officer in question were not revealed, all information tending to identify those complainants may be withheld pursuant to section 3(a)(8).

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 OR91-165

Yours very truly,



Celeste Baker
Assistant Attorney General
Opinion Committee

CAB/RWP/lcd

Ref: ID# 11837

Enclosures: Open Records Decision Nos. 208, 252, 464, 538
Marked documents

cc: Glen Cheek
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