



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

May 14, 1991

Dr. Kenneth E. Beasley
Chief Administrative Officer
The City of El Paso
Two Civic Center Plaza
El Paso, Texas 79901-1196

OR91-234

Dear Dr. Beasley:

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# 11948.

The city of El Paso received a request for a copy of an investigation concerning a charge of sexual harassment against a city employee. You submitted for our inspection a copy of what is described as the only document in the city's possession regarding this matter as of the date of your request. It is a copy of a statement submitted by the complainant to the city employee's supervisor. You contend that the document is excepted by sections 3(a)(1) and 3(a)(8) of the Open Records Act.

Section 3(a)(1) protects from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You suggest that the requested information may be protected by the informer's privilege as incorporated by section 3(a)(1).

The informer's privilege protects the identities of informants and the content of their communications to the extent necessary to protect their identities. *See* Open Records Decision Nos. 582, 579 (1990); 434 (1986). Once the identity of an informant is known to those who would have cause to resent the communication,

however, the privilege is inapplicable. Open Records Decision No. 208 (1978). Because the requestor knows the identity of the individual filing the complaint with the city, the informer's privilege will not protect the requested information.

Section 3(a)(8) of the Open Records Act excepts from required public disclosure

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

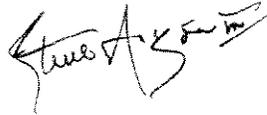
Information may be withheld under section 3(a)(8) if its release "will unduly interfere with law enforcement and crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977); Open Records Decision No. 531 (1989). Information that an administrative agency collects in the performance of its statutory duties and that it intends to report to a law enforcement agency may be withheld under section 3(a)(8), provided the test for nondisclosure is met. *See Open Records Decision No. 493* (1988). However, where the prospects of prosecution are speculative or nebulous, section 3(a)(8) will not protect particular information. Open Records Decision No. 582 (1990).

In her letter, the complainant expresses her intention to report the matter to the police department. However, the city attorney's office informs us that as of April 17, 1991, no complaint regarding this incident had been filed with the El Paso Police Department or other appropriate law enforcement agency. Consequently, we believe the prospects of prosecution are at this time too speculative to warrant withholding the information under to section 3(a)(8). The city must therefore release the requested information.

As a final matter, we note that the statement contains a telephone number at which the complainant may be contacted during certain hours. If the individual is a city employee and the number is her home telephone number, the city is required to delete that information from the statement if she has elected not to allow public access to her home address and home telephone number pursuant to section 3A of the Open Records Act.

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 OR91-234.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragon". The signature is stylized and includes a horizontal line at the end.

Steve Aragon
Assistant Attorney General
Opinion Committee

SA/lb

Ref.: ID#11948

cc: Mr. Lorenzo Juarez
City of El Paso
Animal Control
Two Civic Center Plaza
El Paso, Texas 79901-1196