



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

July 15, 1991

Mr. Terence S. Welch, P. C.
Attorney
Town of Flower Mound
Vial, Hamilton, Koch & Koch
1717 Main Street, Suite 4400
Dallas, Texas 75201

OR91-325

Dear Mr. Welch:

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# 12590.

Two public requestors seek information related to the termination of the chief of police of the Town of Flower Mound. You have released some of the requested information. You claim that the balance of the information responsive to the request which the town has is excepted from required public disclosure under section 3(a)(3), the litigation exception. You also claim various other exceptions under the Open Records Act for certain portions of that information.

In support of your section 3(a)(3) claim, you indicate that the allegations which led to the termination of the chief of police are now under investigation by several law enforcement agencies and that indictment and prosecution of the former chief for state or federal criminal law violations may be reasonably anticipated. A criminal district attorney involved in the investigation of the case has also informed us that criminal litigation may be reasonably anticipated in this matter and asked that the requested information be withheld under section 3(a)(3).¹

¹Also, note that this office has previously determined some of the information at issue here to be protected under section 3(a)(3) because of pending civil litigation. See OR90-528, November 2, 1990.

We agree that the information at issue may be withheld under section 3(a)(3). See Open Records Decision No. 551 (1990). Please note, however, that section 3(a)(3) will serve to protect that information only until related litigation is no longer pending or reasonably anticipated. Also, protection will generally be lost for information made public in the course of litigation or otherwise.

Assuming that you will in fact withhold this information under section 3(a)(3), we do not deem it necessary at this time to address whether other exceptions in the Open Records Act might also permit, or require, withholding some or all of the information.

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 OR91-325.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/mc

Ref.: ID# 12590

Enclosures: Open Records Decision No. 551; OR90-528

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