



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

September 13, 1991

Mr. Terrence S. Welch, P.C.
Attorney
Vial, Hamilton, Koch & Knox
1717 Main Street, Suite 4400
Dallas, Texas 75201

Honorable Bruce Isaacks
Criminal District Attorney
5th Floor Carroll Courts Bldg.
P. O. Box 2344
Denton, Texas 76202

OR91-413

Dear Gentlemen:

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 requests were assigned ID#'s 12949 and 13187, respectively.

The Town of Flower Mound (the town) and the Denton County District Attorney have each received open records requests for the following information:

1. A list of all persons on whom the former Flower Mound chief of police reportedly requested unauthorized computer checks through the TCIC/NCIC computer system; and
2. Records of payments to the former police chief from private investigation firms to which he reportedly sold the TCIC/NCIC information.

The town has also received three additional requests for other information relating to the investigation of the police chief's actions. Since the time of the first open records request, the police chief has pleaded guilty to breach of computer security and has received a \$1,000 fine, a one-year probated sentence, and a loss of his peace officer's license for ten years.

Although neither of you are currently pursuing any other criminal investigation or litigation with regard to this matter, you both inform this office that the United States Attorney's Office and the Federal Bureau of Investigation has obtained copies of all of the requested records, presumably in order to investigate and eventually prosecute the police chief's alleged violations of federal law. A representative of the United States Attorney's Office has specifically requested that none of these documents be released at this time "while this matter is under review . . . as such [release] would interfere with review and analysis of the reports and matters relating to said reports."

Based on the above information, this office agrees that most of the requested information may be withheld pursuant to section 3(a)(3), which protects information relating to pending or reasonably anticipated litigation.¹ *See generally* Open Records Decision No. 551 (1990); *see also* Open Records Decision No. 340 (1982) (copy enclosed). We note, however, that one of the requestors specifically seeks from the town 1) the names of the two private investigative firms that conducted an emergency management audit of the Flower Mound Police Department, 2) itemized costs of the audit, and 3) legal fees associated with the audit "and firing of former Police Chief Dennis Hazelwood." Although the itemized listings of the work performed during the audit may reveal information directly pertaining to the federal investigation, the names of the investigative firms, the overall cost of the audit, and the town's legal fees do not sufficiently relate to the issues of any possible litigation in federal court to bring this type of information under the protection of section 3(a)(3). Consequently, section 3(a)(3) does not protect this information.

Mr. Welch further contends that the names of the investigative firms and the itemized costs of the audit are excepted from required public disclosure by section 3(a)(7) because "[t]hese documents are not in the possession of the Town, have not been paid for from Town funds and have been prepared for transmittal to the District Attorney for criminal prosecution purposes." These documents were nevertheless gathered at the behest of the city attorney, who was acting as the agent of the town and who expects to be reimbursed by the town for all expenses associated with the audit. It is clear that the town does have a right of access to this information. *See* Open Records Decision Nos. 499 (1988); 462 (1987). Such factual information

¹We assume, however, that none of these records have previously been made available to the former police chief during the plea bargain negotiations or otherwise; once information has been obtained by all parties to the litigation, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982).

Mr. Terrence S. Welch, P.C.
Honorable Bruce Isaacks - Page 3 (OR91-413)

is not protected from public disclosure by section 3(a)(7) and so must be released.
See Open Records Decision No. 574 (1990).

You have not submitted to this office copies of the requested attorney billing statements. If you intend to withhold this information this office must receive copies of the statements within 14 days of the date of this letter. Open Records Decision No. 589 (1991) (copy enclosed). You must also mark the statements to show clearly which exceptions apply to specific portions of the documents. Please note, however, that the total amount due for legal fees must be released at this time. *See id.*

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 OR91-413.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/lcd

Ref.: ID# 12949
ID# 13002
ID# 13148
ID# 13187

Enclosures: Open Records Decision Nos. 589, 574, 340

cc: James Florez
Lewisville News
P. O. Box 639
131 W. Main Street
Lewisville, Texas 75067

Mr. Terrence S. Welch, P.C.
Honorable Bruce Isaacks - Page 4 (OR91-413)

Sheryll Robinett
Town of Flower Mound
2121 Cross Timbers
Flower Mound, Tx 75028

Tammy Tipton
Staff Writer
P. O. Box 639
131 W. Main Street
Lewisville, Texas 75067

Doyle Ferguson
4000 Cheyenne Cr.
Flower Mound, Texas 75028

Randall L. Fluke
Assistant U.S. Attorney
Eastern District of Texas
1 Grand Avenue, Suite 504
Sherman, Texas 75090