



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 1, 1991

Ms. Elaine H. Piper  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79999

OR91-447

Dear Ms. Piper:

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# 13318.

You have received two requests for specific complaint and arrest reports filed over an approximately three year period. The requestor seeks (1) documents relating to complaints against her family members filed by neighbors and (2) documents relating to complaints she has filed. You have located approximately 50 pages of records responsive to the request and claim that this information is excepted from required public disclosure by sections 3(a)(1), 3(a)(8), and 3(a)(11) of the Open Records Act.

You have submitted the following exhibits to us for review: Exhibit A contains representative documents relating to the mental state of the subject of some of the complaints; Exhibit B contains documents relating to pending prosecutions and investigations; Exhibit C contains representative samples of reports listing the names of non-arrested suspects; and Exhibit D consists of reports containing observations and opinions of a police officer. You submit that all of the records are excepted from required public disclosure in their entirety under section 3(a)(8).

Section 3(a)(8) excepts:

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.

You advise us that the documents contain information which involves pending prosecutions and investigations. Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 3(a)(8) may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 372 (1983) at 4; 350 (1982). Information relating to pending prosecutions and investigations may be withheld under section 3(a)(8).

Some of the information submitted relates to inactive investigations. Where it is apparent from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers, the names and statements of witnesses may be withheld under section 3(a)(8). Open Records Decision No. 252 (1980); *see also* Open Records Decision No. 397 (1983). Given the facts of this particular case, we believe that retaliation and harassment against the witnesses might result if the requested information is released. Furthermore, because the underlying dispute is long-standing, has not yet been resolved, and relates to pending prosecutions and investigations, we believe that the release of the requested information might adversely affect future cooperation between the witnesses and law enforcement agencies. Accordingly, you may withhold the information from disclosure under section 3(a)(8). You may not withhold, however, any information relating to inactive investigations which would reveal only the identity or only the statements of the requestor or any members of her family. You have not shown that such information would subject witnesses to intimidation or interfere with law enforcement, and it must be released. In addition, first page offense report information, held open in *Houston Chronicle Publishing Co. v. City of Houston*, 531 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) and Open Records Decision No. 127 (1976), must be disclosed where such information does not reveal the identity of juveniles or unarrested suspects. Because we resolve your request under section 3(a)(8), we need not address the applicability of sections 3(a)(1) and 3(a)(11) at this time.

Because prior published open records decisions resolve your request, we are

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resolving this matter with this informal letter ruling rather than with a published open records decisions. If you have questions about this ruling, please refer to OR91-447.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/GK/mc

Ref.: ID#s 13318, 13555

cc: Ms. Marcella Pacholski  
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