



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 9, 1991

Ms. Rosalinda Garcia
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR91-488

Dear Ms. Garcia:

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# 12738.

The Harris County Sheriff's Department has received a request for information relating to a closed internal investigation conducted by the sheriff's office. Specifically, the request seeks

The entire investigative file concerning this investigation and the results of the investigation.

All interoffice memorandum, letters or statements concerning Jailer Patrick Bouvier Guillory's involvement as the subject of the above investigation and all disciplinary action against all deputies, or personnel or inmates as a result of the investigation.

You claim that the requested 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 claim that the identities of an informer and witnesses and their statements included in the investigative report are excepted from public disclosure

by sections 3(a)(1) and 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.

Even if a matter is closed, the names of witnesses may be withheld under certain circumstances. Open Records Decision No. 297 (1981). The names of these persons and their statements may be withheld if it is determined:

from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harrassment [sic] or harm the prospects of future cooperation between witnesses and law enforcement officers.

Open Records Decision No. 252 (1980) at 4. When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release of it would unduly interfere with law enforcement. Open Records Decision No. 287 (1981).

We have examined the documents submitted to us and conclude that there is cause to believe that disclosure of the names of witnesses and their statements would subject them to intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers. Accordingly, the names of the witnesses and their statements may be withheld from required public disclosure by section 3(a)(8). We are not convinced, however, that disclosure of information relating to the type of polygraph test administered and the specific test questions administered would unduly interfere with law enforcement. Accordingly, such information may not be withheld under section 3(a)(8).

You claim that the name of an informer and information which might tend to identify that informer are excepted by the informer's privilege as it is incorporated into section 3(a)(1). The informer's privilege authorizes a governmental body to withhold information which would reveal the identity of persons who report possible violations of law to officials charged with enforcement of that law. Open Records

Decision No. 434 (1986). However, once the identity of an informer is disclosed to those who would have cause to resent the communication, the privilege is no longer applicable. Open Records Decision No. 202 (1978). You claim, and the documents submitted to us for review reflect, that the individual at issue here reported a possible violation of the law to a sheriff's department deputy. Specifically, an inmate provided information which indicated that a department employee was providing controlled substances to another jail inmate. On this basis, we conclude that you have properly invoked the informer's privilege. Having reviewed the documents, however, it is not clear to us whether the subject of the investigation is aware of the identity of the informer. The name of the informer and any information which might identify him may be withheld from required public disclosure under section 3(a)(1) on the condition that the subject *is not* aware of his identity. If, on the other hand, the subject *is* aware of his identity, the information must be released.

You also claim that some of the requested information, including polygraph examination test results, is excepted from public disclosure by section 3(a)(11), which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." Section 3(a)(11) excepts memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policy-making or deliberative process. Open Records Decision No. 462 (1987). However, facts and written observations of fact which are severable from material excepted under section 3(a)(11) must be disclosed. Open Records Decision No. 582 (1990). Open Records Decision No. 565 (1990) held that information relating to polygraph test results is excepted as the opinion of the polygraph examiner. For your convenience, we have marked the information which may be excepted from required public disclosure by section 3(a)(11).

We further note that section 19A of article 4413(29cc), V.T.C.S., which is incorporated by virtue of section 3(a)(1) into the Open Records Act, provides for the confidentiality of information related to polygraph examinations. Subsection (b) of that section provides that

[e]xcept as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the

examination.

The polygraph examination in question here was administered by polygraph examiners for the Harris County Sheriff's Department. Employees of the Harris County Sheriff's Department are prohibited by law from disclosing information obtained from a polygraph examination, except as is provided in subsection (d) of section 19A. The exceptions contained in subsection (d) of section 19A do not appear to apply to the person requesting the information. Accordingly, information obtained from the polygraph examination must be withheld from public disclosure under section 3(a)(1) 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 OR91-488.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lcd

Enclosures: Open Records Decision Nos. 287, 252

Ref.: ID# 12738

cc: Mr. Richard L. Aman
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