



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 13, 1991

Ms. Mary Kay Fischer  
Assistant City Attorney  
City of Galveston  
Legal Department  
P.O. Box 779  
Galveston, Texas 77553-0779

OR91-563

Dear Ms. Fischer:

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# 14006.

You have received two requests for information relating to a complaint filed by the requestor with the Police Department (the department) of the City of Galveston, as well as other matters. In the first request, the requestor seeks:

- 1) all documents concerning the investigation of the complaint filed by the requestor;
- 2) information which details the number of citizen complaints filed against police officers during the term of the present chief of police;
- 3) information indicating the number of citizen complaints which have been determined to be "valid";
- 4) information indicating the number of police officers who have been disciplined as a result of citizen complaints;

- 5) the names of police officers disciplined as the result of citizen complaints;
- 6) a certain report prepared by the chief of police in response to a request from a certain member of the Galveston City Council and a copy of an arrest report of another city councilman; and
- 7) a report prepared by a certain police officer in response to a specific incident.

You advise us that you have released to the requestor some of the information requested in item 1, including the complaint filed with the department by the requestor and the letter prepared in response to that complaint. In addition, you have released all information requested in items 2, 3, 4, and 5. You claim, however, that the information requested in item 1 which has not been disclosed is excepted from required public disclosure by sections 3(a)(8) and 3(a)(11) of the Open Records Act. You also claim that information requested in item 6 is excepted from disclosure by section 3(a)(11). Finally, you assert that the City of Galveston is not in possession of information requested in item 7. The Open Records Act does not ordinarily require a governmental body to obtain information that is not in its possession. Open Records Decision Nos. 445 (1986); 317 (1982). Accordingly, you need not disclose the information requested in item 7.<sup>1</sup>

The second request asks for:

- 8) a certain detective agency report and other information relating to the employment of the detective agency;
- 9) the number of times Galveston S.W.A.T. officers have been called to a location and the number of times S.W.A.T. responses have resulted in the loss of human life; and

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<sup>1</sup> We note that you have submitted information regarding the requestor's prior criminal history with your request for an open records determination. Generally, the identity of the requestor is not relevant to such a determination. See *generally* Open Records Decision No. 542 (1990) at 4.

- 10) information relating to the involvement of a certain police officer in a certain shooting, including the findings of an internal investigation related thereto.

In response to this second request, you claim that information contained in item 8 is protected by common-law privacy interests and by the "false light privacy" as incorporated into the Open Records Act by section 3(a)(1). You advise us that information included in item 9 will be disclosed to the requestor, but assert that information requested in item 10 is excepted from required public disclosure by sections 3(a)(8) and 3(a)(11).

You claim that information responsive to items 1 and 10 include internal disciplinary investigative reports and information which might identify witnesses. You assert that release of this information would unduly interfere with law enforcement and crime prevention and claim that it is excepted from required public disclosure by 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.

The names and statements of witnesses may be withheld if it is determined necessary in order to 1) protect witnesses from intimidation or harassment; or 2) protect the prospects of future cooperation. Open Records Decision No. 397 (1983). Open Records Decision No. 361 (1983) held that information which contains complaints or derogatory information about police officers may not be withheld from required public disclosure under section 3(a)(8). Open Records Decision No. 562 (1990) at 10, however, held that details of a complaint against an officer may be withheld if disclosure would unduly interfere with law enforcement. 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 its release would unduly interfere with law enforcement. Open Records Decision No. 287 (1981).

We have examined the documents submitted to us. We identified only one document which may be described as a witness statement and one other reference to a possible witness who apparently has not provided a witness statement. You have not demonstrated that disclosure of the names of the witnesses and the statement would subject them to intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers. Accordingly, the name of the witnesses and the statement may not be withheld from required public disclosure by section 3(a)(8). Nor are we convinced that disclosure of information relating to the internal disciplinary investigations would unduly interfere with law enforcement. Accordingly, such information may not be withheld under section 3(a)(8).

Next you claim that the information requested in items 1, 6, and 10 is excepted from required public disclosure by section 3(a)(11) of the Open Records Act, 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. 464 (1987) at 3. Section 3(a)(11) may also protect such information prepared by outside consultants. See Open Records Decision No. 563 (1990) at 5. However, facts and written observations of fact which are severable from material excepted under section 3(a)(11) must be disclosed. *Id.* The documents you submitted to us contain some advice, opinion, or recommendation. We have marked those portions of the documents that contain advice, opinion, or recommendation. The marked information may be withheld from required public disclosure under section 3(a)(11). The remainder of the information must be released.

You also appear to assert that arrest records responsive to item 6 are excepted from required public disclosure. In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-187 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the Texas Supreme Court ruled that first page offense report information is available for public inspection. See also Open Records Decision Nos. 366 (1983); 127 (1976).

Information made available under the *Houston Chronicle* decision includes the arrestee's name, alias, race, social security number, sex, age, occupation, address, police identification number, physical condition, name of arresting officer, date, time, and place of arrest, booking information, charge, court in which charge is filed, details of the offense and/or arrest, notation of any release or transfer, bond information, identification and description of complainant, property and vehicle involved, and description of weather. You have submitted to us for review a "Record of Arrest" responsive to the request. It contains the types of information made public by *Houston Chronicle* and not excepted from required public disclosure by section 3(a)(8). You have also submitted a "Record of Arrest - Blotter". Information contained in an arrest record blotter is public to the extent that it contains information made public by *Houston Chronicle* and is not excepted by section 3(a)(8). See Open Records Decision No. 366. Accordingly, the "Record of Arrest" and the blotter must be released to the extent they contain information which is open under *Houston Chronicle*.

Next, you assert that information responsive to item 8 is protected from required public disclosure by common-law and "false light" privacy interests. "False light" privacy is no longer a proper consideration under section 3(a)(1) and may not be invoked to withhold information from required public disclosure. Open Records Decision No. 579 (1990). Some of the information submitted, however, may be excepted from required public disclosure by common-law privacy interests. In *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court ruled that common-law privacy excepts "information contain[ing] highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person," provided "the information is not of legitimate concern to the public." Where important public figures are involved, a legitimate public concern may overcome any right of common-law privacy. See Open Records Decision No. 455 (1987). For your convenience, we have marked the information which you may withhold from required public disclosure under common-law privacy interests as incorporated by section 3(a)(1) into the Open Records Act. The remainder of the information responsive to item 8 is of legitimate concern to the public and must be released.

Finally, you submitted to us for review results of a certain polygraph examination as responsive to the second request. Section 19A of article 4413(29cc), V.T.C.S. makes confidential "information acquired from a polygraph examination."

As the exceptions to this confidentiality provision do not apply here, you must withhold all information resulting from the polygraph examination.

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 OR91-563.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/GK/lcd

Enclosures: Marked Documents

Ref.: ID# 14006, 14000, 14114

cc: Mr. Jim Mabe  
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