



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 8, 1991

Honorable Pat McGowan
City Attorney
City of Blanco
P. O. Box 836
Fredericksburg, Texas 78624

OR91-564

Dear Ms. McGowan:

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# 13516.

The City of Blanco received two requests for information relating to an investigation into possible wrongdoing with regard to funding of the construction of the "Town Nature Trail." Specifically, the requestors seek copies of any and all reports of the city auditor for a four month period and all audits performed by a certain individual since May 1, 1991. In addition, one of the requestors seeks access to a tape recording of a public hearing held on August 22, 1991. You assert that a certain auditor's report is responsive to the request, and you have submitted it to us for review. You claim that the audit report does not belong to the city and is therefore not subject to the Open Records Act. You also claim the audit report is excepted from required public disclosure by section 3(a)(8) of the Open Records Act.

Section 2(2) of the Open Records Act defines "public records" as

the portion of all documents, writings, letters, memoranda, or other written, printed, typed, copied, or developed materials which contains public information.

Section 3(a) defines "public information" as

[a]ll information collected, assembled, or maintained by or for governmental bodies . . . pursuant to law or ordinance or in connection with the transaction of official business.

Physical location of information is not necessarily dispositive of whether it is covered by the Open Records Act. Open Records Decision No. 492 (1988) at 2. Moreover, whether a custodian has actual control of information can have no bearing on whether the information is "public." Open Records Decision No. 425 (1985) at 2.

A letter from an assistant district attorney for the 33rd Judicial District, submitted to us with your request for an open records determination, indicates that the audit report relates to the "financial affairs of the City of Blanco." The report itself is addressed to the mayor and city council members of the City of Blanco and indicates that the report was prepared at their request. The content matter of the report clearly relates to the transaction of official business and is a public record. Having thus examined the documents submitted to us, we conclude that the report is subject to the Open Records Act.

Open Records Decision No. 474 (1987) at 4 held that 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 records to information that relates to the incident. When section 3(a)(8) is claimed, it must be determined whether release would undermine a legitimate interest of law enforcement or prosecution, and a case-by-case approach is necessary. Open Records Decision No. 434 (1986).

We have reviewed the documents submitted to us. The assistant district attorney asserts that the audit was conducted "exclusively as part of a criminal investigation" on behalf of the district attorney's office." We thus conclude that the report may be withheld from required public disclosure under section 3(a)(8).

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 OR91-564.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/GK/lcd

Ref.: ID# 13516, 13653