



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 3, 1991

Ms. Betty Dohoney
City Attorney
City of Hillsboro
P.O. Box 1074
Hillsboro, Texas 76645

OR91-594

Dear Ms. Dohoney:

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# 13377.

On October 22, 1990, the City of Hillsboro requested a determination of its duty to release a report regarding a city investigation of alleged incidents of police misconduct. In OR91-250, this office ruled that the reports in question could be withheld pursuant to section 3(a)(8) of the Open Records Act, which excepts "records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime." Our determination was based on the fact that the report had become part of an investigation by a district attorney acting as a special prosecutor. Since that time, the City of Hillsboro has received three more requests for the reports at issue. In addition, one of the requestors seeks all police and city memos related to the investigation. Accordingly, you have requested a determination on the availability of the information under the Open Records Act.

You have submitted to us material responsive to the request and have claimed that it is exempt from public disclosure under a variety of exceptions, principally sections 3(a)(8) and 3(a)(7).¹ We have considered the exceptions you

¹You have also incorporated by reference additional exceptions claimed as to release of the reports dealt with in OR91-250, specifically section 3(a)(1), (a)(2), (a)(3), and (a)(11).

claimed and have reviewed the documents at issue. We will deal first with the requests for the report on the investigation of the Hillsboro Police Department (the "Yarborough report"). We have been informed that the investigation is ongoing and is now being handled by the Law Enforcement Division of the Office of the Attorney General. Accordingly, the city may continue to withhold the reports under section 3(a)(8), the cover letter to the report dated August 24, 1990, and the August 30 cover letter to the submission of transcripts of interviews upon which the August 24 report was based. As explained in OR91-250, "when a matter is under active investigation for possible criminal violations . . . [section 3(a)(8)] may be invoked by any proper custodian of the information." OR91-250, *citing* Open Records Decision No. 372 (1983).

One of the requestors also seeks "copies of any police and city memos pertaining to the report." You have submitted to us documents responsive to this request and have claimed exceptions from public disclosure for all of them. We agree that the following documents may be withheld under section 3(a)(7), which encompasses the attorney-client privilege for confidential communications between an attorney and client, or between attorneys working on the same case for the same client:

1. Letter from Roy Barrett of Naman, Howell, Smith & Lee to Betty Dohoney, dated July 24, 1990.
2. Letter from Betty Dohoney to Roy Barrett of Naman Howell, Smith & Lee, dated October 30, 1990, with enclosures.

See Open Records Decision No. 574 (1990). You have also claimed the 3(a)(7) exception for a memorandum from Betty Dohoney, City Attorney for Hillsboro, to Mack Wofford, City Manager for Hillsboro, dated November 5, 1990. This memorandum was prepared by Mrs. Dohoney as the city's legal argument in support of its claims that the report dealt with in OR91-250 could be withheld from public disclosure. It was delivered to this office as the city's brief in support of its position against disclosure in that case. Once adopted by the city and submitted to us, the document lost any privileged status it might have had. However, portions of the document may be withheld under section 3(a)(8), which you have also claimed, as they reveal sensitive information related to the current investigation. We have marked the portions you may withhold on this basis.

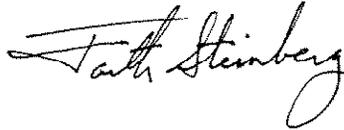
We have found that the following documents or portions of documents are not excepted from public disclosure by section 3(a)(8), or by any other claimed exception to the act:

1. The greater portion of the letter from Mack Wofford to Michael Yarborough, dated July 31, 1990, informing Mr. Yarborough of the fact and terms of his employment by the city to investigate allegations of police misconduct. As we have indicated by our markings on the letter, you may withhold information identifying the precise incidents to be investigated under section 3(a)(8).
2. Letter from Mack Wofford to Attorney General Jim Mattox, dated October 22, 1990, requesting a determination of the availability of the Yarborough report under the Open Records Act.
3. Letter from Betty Dohoney to Dan Dent, District Attorney, 66th Judicial District, dated October 22, 1990.
4. Most of the letter from Mack Wofford to Sgt. Lee Boden, dated July 31, 1990. As in item #1 above, you may withhold, per our markings, information identifying the specific incidents under investigation under section 3(a)(8).

We note especially that the letter to General Mattox was a letter requesting an open records determination. As a general rule, this office considers such letters to be open, unless they contain information required by law to be kept confidential. See Open Records Decision No. 459 (1987). We do not find that any of the information in the letter may be withheld on that basis. Therefore, you must release it. We also believe, after consultation with the Law Enforcement Division, that release of the information as indicated above will not interfere with the ongoing investigation of the Hillsboro Police Department, and thus may not be withheld under section 3(a)(8). Finally, we do not address the status of the police offense reports you submitted to us, as we agree that they are not within the scope of the present requests.

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 OR91-557.

Yours very truly,



Faith Steinberg
Assistant Attorney General
Opinion Committee

FS/lb

Ref.: ID#s 13377, 13716, 13623, 13409, 13392, 13276, 13360, 11042, 10914; OR91-250

Enclosures: Open Records Decision Nos. 459, 574 ; marked documents.

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