



Office of the Attorney General

State of Texas

March 30, 1992

DAN MORALES

ATTORNEY GENERAL

Honorable Edwin E. Powell, Jr.
Coryell County Attorney
P.O. Box 796
Gatesville, Texas 76528

OR92-125

Dear Mr. Powell:

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# 14876.

You have received a request for information relating to an internal investigation pertaining to inmates of the Coryell County Jail. Specifically, the requestor seeks:

- 1) A copy of all documents involving an in-house investigation last year of an inmate or inmates at the Coryell County Jail for taking photographs.
- 2) A copy of the conclusion of the investigation.
- 3) A copy of the results of the investigation, which could include resignations or any action taken against parties involved in the incident.

You advise us that the Coryell County Sheriff's Department (the "department") does not possess any information responsive to item No. 2. The Open Records Act does not require a governmental body to obtain information not in its possession. Open Record Decision No. 558 (1990). You have submitted to us for review several statements and three letters of resignation of former county jail employees. You

claim that this information is excepted from required public disclosure by sections 3(a)(2), 3(a)(3) and 3(a)(8) of the Open Records Act.¹

You claim that the requested information is excepted from required public disclosure by section 3(a)(2). Section 3(a)(2) excepts from required public disclosure "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This section protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act by the Texas Supreme Court 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). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. This office has recognized that information that relates to an area of public interest, *i.e.*, the working environment and on-the-job conduct of public employees, is of legitimate public concern. *See* Open Records Decision No. 438 (1986); *see also* Open Records Decision Nos. 579 (1990); 470 (1987). The reasons for a public employee's resignation or termination have been expressly made public in previous open records decisions. *See* Open Records Decision No. 455 (1987). Although release of some of the requested information may prove embarrassing to some of the parties involved, we conclude that it may not be withheld from required public disclosure under section 3(a)(2) because it is of legitimate public concern.

You also claim that the requested information is excepted from required public disclosure by 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 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.

This office has stated in previous open records decisions that the test for determining whether records are excepted from public disclosure under section 3(a)(8) is whether release of the records unduly would interfere with law

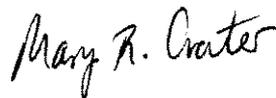
¹You withdrew your claim under section 3(a)(3) pursuant to a telephone conversation with this office on March 16, 1992.

enforcement and crime prevention. Open Records Decisions Nos. 553 (1990) at 4; 474 (1987) at 5; *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977) (citing *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)). 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 the requested information would unduly interfere with law enforcement. A case-by-case determination is necessary. Open Records Decision No. 434 (1986) at 2-3.

You do not indicate that the requested information relates to an active criminal investigation by a law-enforcement agency. You have not explained how release of the requested information would undermine legitimate interests of law enforcement, and the information submitted to us for review does not supply an explanation on its face. Accordingly, you may not withhold the requested information from required public disclosure under section 3(a)(8) of the Open Records Act. The requested information must be released in its entirety.

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 OR92-125.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/nhb

Ref.: ID# 14876, ID# 15240

cc: Mr. Brian Blansett
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