



Office of the Attorney General
State of Texas

May 9, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
Institutional Division
P. O. Box 99
Huntsville, Texas 77342-0099

OR92-203

Dear Mr. Peck:

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# 15057.

An inmate of the Texas Department of Criminal Justice Institutional Division has requested information relating to two incidents occurring in July 1991. Specifically, he seeks "copies of the witness statements contained in [two disciplinary case files] for each officer and each inmate." You have submitted to us for review two "TDCJ-ID Disciplinary Report and Hearing Record" files which contain the information responsive to the request. You claim that the two files, with the exception of the first page of each file, are excepted from required public disclosure in their entirety by section 3(a)(8) of the Open Records Act. You also claim that the requested information is excepted from required public disclosure by the informer's privilege as incorporated by section 3(a)(1) into the Open Records Act. Because the requestor seeks only copies of witness statements, we need not address the availability of other information contained in the file.

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.

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 would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex Parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)); see also Open Records Decision No. 413 (1984) (Department of Corrections is a "law enforcement" agency within the meaning of section 3(a)(8)).

You advise us:

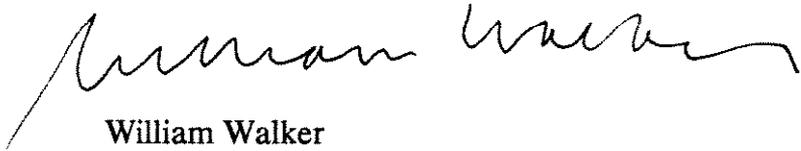
Our practical concern is that release of this information to [the requestor] might result in harassment and retaliation by him against the witnesses should he determine that their testimony or statements were not sufficiently supportive of his position in the matter. Even if some aspects of the statements were supportive or if some of the witness statements were supportive, our practical hazard is that a practice or policy of revealing favorable witness identities or favorable witness statements only has the indirect affect of fingering unfavorable or non-supportive inmate witnesses or has the affect of identifying known witnesses as being nonsupportive.

We have examined the documents submitted to us for review and conclude that release of the witness statements would undermine a legitimate law enforcement interest. Accordingly, the witness statements may be withheld from required public disclosure under section 3(a)(8) of the Open Records Act. As we resolve this matter under section 3(a)(8), we need not address the applicability of section 3(a)(1) at this time.

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 OR92-203.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", written in a cursive style.

William Walker
Assistant Attorney General
Opinion Committee

WW/GK/lmm

Ref: ID# 15057
ID# 15234
ID# 15364

cc: Terry Beck
TDCJ #575122
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