



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1992

Ms. Elaine H. Piper
Assistant City Attorney
City of El Paso
Two Civic Center Plaza
El Paso, Texas 79999

OR92-366

Dear Ms. Piper:

The City of El Paso asks whether certain police records concerning El Paso gangs is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID # 16089.

The City of El Paso has received an Open Records Act request for the names of all individuals arrested by the Gang Task Force, copies of the arrest reports of all persons arrested by the Gang Task Force, and the gang membership lists maintained by the Gang Task Force. The City contends that this information is excepted from required public disclosure by Open Records Act section 3(a)(1) and 3(a)(8).

Open Records Act section 3(a) states that all information in the possession of governmental bodies is public information, subject to the following relevant exceptions:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision; [and]

....

(8) 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.

Pursuant to Open Records Act section 3(a)(8), evidentiary information relating to a pending criminal case or investigation may be withheld by a law enforcement agency or prosecutor. Open Records Decision Nos. 474 (1987); 372 (1983); 350 (1982); 127 (1976). The city has advised that its list of El Paso gang members is under active investigation. We conclude that disclosure of this list would impede further investigation. Therefore, this information is excepted pursuant to Open Records Act section 3(a)(8).

The requester has also requested the names of "all suspects arrested by the Gang Task Force within the last year." You have furnished us with a list of the names of adult individuals arrested by the Task Force, which lists the dates of arrest and the nature of the alleged offenses. You have excluded from this list the names of juvenile arrestees. In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court held that basic information concerning the fact of an arrest, such as the name of the arrestee, the date and nature of the alleged offense, etc., is public information. However, pursuant to Family Code section 51.14, the identity of juvenile offenders and their arrest records are deemed confidential. See Open Record Decision No. 394 at 4 (1983). Therefore, the identities of all juvenile offenders and their arrest records are excepted from required public disclosure by Open Records Act section 3(a)(1). The list of adult arrestees, however, is public information and is not otherwise excepted; accordingly, this information should be disclosed to the requester. In your letter to this office you have explained that not all persons arrested by the Gang Task Force are suspected gang members or arrested for gang-related activities. You should explain to the requestor the limitations of the information that he has requested.

The requestor also requests the reports of all individuals arrested by the Task Force. Contrary to your claim, this office has ruled that arrest records are not protected by common-law privacy and therefore are not excepted on this basis by Open Records Act section 3(a)(1). As previously discussed, in *Houston Chronicle* the Court held that prior to trial basic factual information concerning an arrest was public information; however, the investigative findings of the police, as well as the identity of witnesses and informants, were excepted from required public disclosure by Open Records Act section 3(a)(8). See 531 S.W.2d at 186-87. Therefore, if the offense report relates to a case under current investigation, the city need only disclose the name of the arrestee, the nature, date, and place of the alleged offense, and the name of the investigating officer. The remaining portions of an active

offense report are excepted by section 3(a)(8). *Id.* Once a case is closed the offense report and other investigative reports may be withheld only if its release "will unduly interfere with law enforcement and crime prevention." *See* Att'y Gen. Op. MW-446 (1982); Open Records Decision Nos. 366 (1983) at 3; 216 (1978) at 3. It is the governmental body's duty to demonstrate how disclosure of investigative information would impede law enforcement efforts. *See* Open Records Decision No. 444 (1986). You have failed to explain how the disclosure of offense reports relating to closed cases would interfere with law enforcement and crime prevention. Moreover, in your letter of May 20, 1992 requesting the opinion of this office you advised that representative offense reports would be submitted for our review; however, no such documents have been received by this office. Therefore, the offense reports relating to closed cases must be released. However the names of confidential informants may be redacted from such reports. *See* Open Records Decision Nos. 329 (1982); 216 (1978).

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 OR92-366

Very truly yours,


Geoffrey Hennessey
Assistant Attorney General
Opinions Committee

GH/lmm

Ref.: ID# 16089
ID# 16351

cc: Mr. Raul Hernandez
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