



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1992

Ms. Jo Wiginton
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR92-394

Dear Ms. Wiginton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID # 14916.

The City of Houston has received an Open Records Act request from an individual who was declined employment as a Houston police officer for "copies of [his] entire application with the Houston Police Department, including background investigations and any and all information pertaining to [him]." The City has submitted for our review the applicant's file which includes his application, reports concerning background investigations, a polygraph report, and internal memorandums. The City claims that portions of these documents are excepted from required public disclosure by Open Records Act sections 3(a)(1), 3(a)(8), and 3(a)(11).

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

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

.....

(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; [and]

....

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

The investigative file shows that the requester was previously accused of violent sexual assault. You contend that the identity of the complainant is excepted by section 3(a)(1) pursuant to the common-law right to privacy. This office has previously ruled that common-law privacy permits the withholding of the name of a serious sexual offense victim. *See* Open Records Decision No. 393 (1983); 339 (1982). Accordingly, the name of the alleged sexual assault victim may be withheld. The record also shows that another individual provided information concerning this alleged offense. This information is excepted from required public disclosure by section 3(a)(1) pursuant to the "informer's privilege." *See* Open Record Decision Nos. 582 (1991); 579 (1990); 377 (1983).

Open Records Act section 3(a)(11) excepts from required public disclosure advice and opinion on policy matters and is intended to encourage open and frank discussion; however, severable factual information is not excepted. Open Records Decision Nos. 582; 574; 565; 563 (1990). We conclude that the opinions of the polygraph examiner, the department psychologist, and those of the applicant's former associates may be excepted pursuant to section 3(a)(11).

You also claim that the records in there entirety are excepted pursuant to Open Records Act section 3(a)(8). You claim that candid and thorough background investigations contribute to the law enforcement effort, and that public disclosure of these background investigations has a chilling effect. You argue that in order to further law enforcement efforts such background investigations should be deemed confidential in there entirety by sections 3(a)(8).

In prior Open Records Act decisions this office has ruled that whether release would undermine a legitimate interest of law enforcement or prosecution must be determined on a case-by-case basis. *See* Open Records Decision No. 444; 434 (1986); 409 (1984). Speculative and nebulous law enforcement concerns are not a sufficient basis for invoking section 3(a)(8). *See* Open Records Decision No. 582

at 3. You have failed to identify any particular harm that would result from disclosure of the remaining records, and therefore the section 3(a)(8) exceptions does not apply.

In sum, we have concluded that the portions of the documents you have marked for our review are excepted by sections 3(a)(1) and 3(a)(11). The remaining portions of the applicant's application and investigative file should be disclosed to the requestor. 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 OR92-394.

Very truly yours,


Geoffrey Hennessey
Assistant Attorney General
Opinions Committee

GH/lmm

Ref.: ID# 14916
ID# 15126

cc: Mr. Anthony Phillip Klonaris
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